

United States
Circuit Court of Appeals
For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

VS.

JACK L. WARNER,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the
United States Board of Tax Appeals

FILED

NOV 18 1941

PAUL P. O'BRIEN,

CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

STANLEIGH P. FRIEDMAN,
LAWRENCE A. BAKER.

For Comm'r.:

B. M. BRODSKY, Esq.

Docket No. 97401.

JACK L. WARNER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1939

Mar. 8—Petition received and filed. Taxpayer notified. (Fee paid.)

Mar. 8—Copy of petition served on General Counsel.

Mar. 8—Request for Circuit hearing in Washington, D.C., filed by taxpayer. March 8, 1939, copy served.

Apr. 19—Answer filed by General Counsel.

Apr. 19—Request for Circuit hearing in Los Angeles, California, filed by General Counsel.

Apr. 24—Hearing set May 17, 1939, on respondent's request. Copy of answer served.

May 5—Motion to transfer to the New York calendar filed by taxpayer. May 8, 1939, granted.

1940

Feb. 23—Motion for leave to file amendment to petition, amendment to petition lodged filed by taxpayer.

Feb. 24—Motion for leave to file amendment to petition granted.

Feb. 27—Hearing set April 1, 1940, New York City.

Feb. 26—Copy of motion and amendment to petition served on General Counsel.

Apr. 4—Hearing had before Mr. Murdock on merits. Submitted. Respondent moves to file amended answer. Granted. Reply to amended answer filed by petitioner. Appearance of Lawrence A. Baker, Esq., filed. Amended answer filed. Copy served. Amended reply filed. Copy served. Stipulation of facts filed. Petitioner's brief due May 4, 1940. Respondent's brief June 4, 1940. Replies July 5, 1940.

Apr. 15—Amendment to petition filed by taxpayer. April 15, 1940, copy served on General Counsel.

Apr. 15—Transcript of hearing April 4, 1940, filed.

Apr. 23—Answer to amendment to petition filed by General Counsel. April 24, 1940, copy served. [1*]

*Page numbering appearing at top of page of original certified Transcript of Record.

1940

Apr. 30—Reply to answer to amendment to petition filed by taxpayer.

Apr. 30—Copy of reply served on General Counsel.

May 11—Motion for leave to file the attached printed brief filed by taxpayer. May 13, 1940, granted.

May 13—Brief filed by taxpayer.

May 13—Copy of motion and brief served on General Counsel.

May 31—Motion for extension to June 15, 1940, to file brief filed by General Counsel.

July 30—Motion for leave to file the attached brief. Brief lodged, filed by General Counsel. August 3, 1940, granted.

Sept. 11—Motion for leave to file the attached reply brief (printed) filed by taxpayer. September 16, 1940, denied. Brief returned.

Oct. 15—Opinion rendered. Murdock. Decision will be entered under Rule 50.

Dec. 6—Agreed computation of deficiency filed.

Dec. 13—Decision entered. Murdock, Division 3.

1941

Mar. 6—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

Mar. 19—Proof of service filed by General Counsel (2).

Apr. 16—Certified copy of an order from 9th Circuit extending time to June 16, 1941, to prepare and transmit the record filed.

1941

- June 11—Certified copy of an order from the 9th Circuit extending time to August 15, 1941, to prepare and transmit the record filed.
- Aug. 11—Certified copy of an order from 9th Circuit extending time to September 15, 1941, to complete the record filed.
- Sept. 3—Statement of points filed by General Counsel. Proof of service thereon.
- Sept. 3—Designation of portions of the record filed by General Counsel. Agreed to, proof of service thereon. [2]

United States Board of Tax Appeals

Docket No. 97401

JACK L. WARNER,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named petitioner hereby petitions for a redetermination of the alleged deficiency in Federal gift tax set forth by the Commissioner of Internal Revenue in his notice of deficiency in gift tax liability for the calendar and taxable years 1932, 1933, 1934 and 1935, which notice bears date December 21, 1938, and symbols MT-ET-GT-474-32-33-34-35-6th California, and as a basis of his proceeding, alleges as follows:

1: The petitioner is a citizen of the United States of America residing at 1801 Angelo Drive, Beverly Hills, California.

2: The notice of deficiency (with Bureau letter of August 4, 1938 annexed), a copy of which is attached and marked Exhibit "A", purports to have been mailed to [3] petitioner on December 21, 1938.

3: The taxes in controversy are Federal gift taxes for the calendar years 1932, 1933, 1934 and 1935.

4: The determination of the alleged deficiencies set forth in said notice of deficiency is based upon the following errors:

(a) The respondent erred in his conclusion set forth in the Bureau letter of August 4, 1938, attached to the Notice of Deficiency, captioned Schedule B, which is as follows:

Schedule B

An examination of the trust agreement created on May 26, 1932, wherein Albert Warner is named as grantor, discloses that under Article 5 Harry M. Warner, Jack L. Warner and Stanleigh P. Friedman, and the survivors and survivor of them shall have the right and power at any time to alter, amend or revoke the trust instrument. In case the trust is revoked in whole or in part to the extent as to which the trust is revoked shall be transferred to you, or to your estate if deceased. Since you, and not Albert Warner, appear to be the actual settlor

of this trust, and, accordingly, as Harry M. Warner and Stanleigh P. Friedman are persons not having a substantial adverse interest in the disposition of the trust property or income therefrom, it is the opinion of this office that the trust is revocable insofar as you are concerned, and the income paid to the beneficiaries under the trust, other than yourself, represents gifts by you of the actual amount received by the beneficiaries each year. [4]

(b) The respondent erred in the following computations based upon the false conclusion set forth in Schedule B, as follows:

(i) Tentative determination with respect to calendar year 1932, to increase "Total Gifts" "Net Gifts", "Tax on Net Gifts" and "Deficiency" as set forth in Statement accompanying Commissioner's letter of August, 1938.

(ii) Tentative determination with respect to calendar year 1933 to increase "Total Gifts", "Gross Gifts", "Net Gifts", "Net Gifts for Preceding Years", "Tax on Total Net Gifts", "Tax on Net Gifts for Preceding Years", "Tax on Net Gifts for 1933" and "Deficiency for 1933" as set forth in Statement accompanying said letter of August 4, 1938.

(iii) With respect to calendar year 1934—"Corrected Computation" of "Total Gifts 1934", "Net Gifts for Preceding Years", "Total Net Gifts", "Specific Exemption", "Net

Gifts'' as set forth in Statement accompanying said letter of August 4, 1938.

(iiii) Tentative determination with respect to calendar year 1935, to increase "Total Gifts", "Net Gifts", "Net Gifts for Preceding Years", "Total Net Gifts", "Tax on Total Net Gifts", "Tax on Net Gifts for Preceding Years", "Tax on Net Gifts 1935", and Alleged Deficiency arrived at for 1935, as set forth in the Statement accompanying said letter of August 4, 1938.

(c) The respondent erred in his determination to assess additional gift tax for gifts made during the calendar year 1934 and in using a "Corrected Computation" of total gifts for the year 1934 in arriving at "amount of Net Gifts for preceding years" for the purpose of determining alleged deficiency in gift tax for gifts made [5] during the calendar year 1935.

5: The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That Albert Warner, and not the petitioner, is the actual settlor and grantor of the Trust under review. This Trust was created by an Indenture of Trust executed and delivered, together with the securities constituting the corpus thereof, upon and under date of May 26, 1932, by Albert Warner, grantor, to Central Hanover Bank and Trust Company and Harry M. Warner, Jack L. Warner, Albert Warner and Stanleigh P. Friedman, Trustees.

(b) That the securities constituting the corpus of said Trust were at all times prior to the delivery thereof, as aforesaid, the property of Albert Warner.

(c) That Harry M. Warner and Stanleigh P. Friedman are persons having a substantial adverse interest in the disposition of the trust property and the income therefrom contrary to the statement in Schedule B. [6]

(d) That said Trust is irrevocable and that the income paid thereunder to the beneficiaries does not represent gifts by Jack L. Warner, contrary to the statement of "opinion" of the Gift Tax Bureau set forth in said Schedule B.

(e) That the statutory period within which an assessment may be made for gifts made during the calendar year of 1934 has expired; that heretofore and pursuant to a notice of deficiency dated August 13, 1937, the said petitioner was assessed a deficiency of \$521.38 for gift tax upon gifts made by the petitioner during the calendar year 1934, which deficiency has heretofore been paid in full by petitioner; that by reason whereof respondent is barred by law from increasing the amount of net gifts made during calendar year 1934 in order to arrive at "amount of Net Gifts for Preceding Years" in order to compute the gift tax upon net gifts made during the calendar year 1935.

6. The petitioner prays for relief from the deficiency asserted by the respondent in the following and each of the following particulars: [7]

(a) With respect to each and every assignment of error, an order be entered directing respondent to revise or modify the action proposed by the deficiency letter.

(b) For such other and further relief as to the Board may seem just and proper.

Wherefore, petitioner prays that this Board may hear this appeal and redetermine the deficiency herein alleged.

STANLEIGH P. FRIEDMAN

Attorney for Petitioner, 11
West 42nd Street, New York
City, New York. [8]

State of New York,
County of New York.—ss.

Jack L. Warner, being duly sworn, says: that he is the petitioner above-named; that he has read the said petition or had the same read to him; that he is familiar with the statements therein contained and that the facts therein stated are true, except such facts as are stated to be upon information and belief, and those facts he believes to be true.

JACK L. WARNER

Subscribed and sworn to before me this 2 day of
March, 1939.

(Seal) ELAINE C. SILVERMAN
Notary Public, Kings Co. Clks. No. 897, Reg. No.
9205 N. Y. Co. Clks. No. 373, Reg. No. 9S373
Commission expires March 30, 1939. [9]

EXHIBIT "A"

Treasury Department
Washington

Office of
Commissioner of Internal
Revenue
Address Reply to
Commissioner of Internal Revenue
And Refer to
MT-ET-GT-474-32-33-34-35-6th California
Donor—Jack L. Warner
Dec. 21, 1938

Mr. Jack L. Warner,
1801 Angelo Drive,
Los Angeles, California.

Sir:

You are advised that the determination of your
gift tax liability for the calendar years 1932, 1933,
1934 and 1935 discloses a deficiency of \$4,586.15
(\$75.14 for 1932, \$541.60 for 1933 and \$3,969.41 for
1935) as shown in the statement attached.

In accordance with the provisions of existing
internal revenue laws, notice is hereby given of the
deficiency mentioned.

Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the inclosed forms and forward them to this office. The signing and filing of these forms will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the forms, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner

By D. S. BLISS

Deputy Commissioner

Inclosures:

Statement.

Waivers.

Copy of letter. [10]

MT-ET-474-32-33-34-35-6th California

Donor—Jack L. Warner

STATEMENT

Your protest, which was made the subject of a conference in the office of the Internal Revenue Agent in Charge, Upper New York Division, is

directed against the inclusion in gross gifts of the income during the years 1932, 1933, 1934 and 1935 from the revocable trust created on May 26, 1932, of which you were the actual settler.

You are advised that while careful consideration has been given to all of the statements made in your protest, the evidence submitted is insufficient to warrant any changes in the gifts tentatively determined in this case. Accordingly, the Bureau adheres to the deficiency of \$4,586.15 (\$75.14 for 1932, \$541.60 for 1933 and \$3,969.41 for 1935) as set out in Bureau letter of August 4, 1938, a copy of which is inclosed.

The following computations show your Federal gift tax liabilities for the calendar years 1932, 1933 and 1935, which are hereby made final:

1932		
	Returned	Determined
Total gifts, 1932.....	\$ 6,714.18	\$26,723.22
Less exclusions	0.00	10,000.00
Gross gifts	6,714.18	16,723.22
Less specific exemption.....	6,714.18	6,714.18
Net gifts, 1932.....	0.00	10,009.04
Tax on net gifts, 1932.....		75.14
Tax assessed on return.....		0.00
Deficiency.....		\$ 75.14

	Returned	Determined
1933		
Total gifts, 1933.....	\$21,591.90	\$57,140.88
Less exclusions	0.00	10,000.00
Gross gifts	21,591.90	47,140.88
Less specific exemption.....	21,591.90	21,591.90
Net gifts, 1933.....	0.00	25,548.98
Net gifts for preceding years.....	0.00	10,009.04
Total net gifts.....	0.00	35,558.02
		[11]
Tax on total net gifts.....		\$ 616.74
Tax on net gifts for preceding years..		75.14
Tax on net gifts, 1933.....		541.60
Tax assessed on return.....		0.00
Deficiency		\$ 541.60
1935		
Total gifts, 1935.....	\$22,014.78	\$57,274.56
Less exclusions	5,000.00	10,000.00
Amount included	17,014.78	47,274.56
Less specific exemption.....	0.00	0.00
Net gifts, 1935.....	17,014.78	47,274.56
Net gifts for preceding years.....	5,665.23	100,714.77
Total net gifts.....	22,680.01	147,989.33
Tax on total net gifts.....	285.30	8,519.04
Tax on net gifts for preceding years..	0.00	4,264.33
Tax on net gifts, 1935.....	285.30	4,254.71
Tax assessed on return.....		285.30
Deficiency		\$ 3,969.41

Treasury Department

Washington

Office of

Commissioner of Internal

Revenue

Address reply to

Commissioner of Internal Revenue

And Refer to

MT-ET-GT-474-32-33-34-35-6th California

Aug. 4, 1938

Donor—Jack L. Warner

Mr. Jack L. Warner,

1871 Angelo Drive,

Los Angeles, California.

Sir:

The examination by this office of your gift tax returns for the years 1932, 1933 and 1935 indicates that the adjustment of your tax liability shown in the accompanying statement is warranted.

If you agree to the adjustment shown in the accompanying statement, the enclosed form of waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and to stop the accumulation of interest. Such interest will cease thirty days after the receipt of the executed form, or upon the payment of the additional tax to the collector, whichever occurs first.

If you desire to make immediate payment of the additional tax without awaiting assessment, you

should forward your remittance to the Collector of Internal Revenue at Los Angeles, California, enclosing this letter, or a copy thereof. Interest on the additional tax should be included in your remittance, computed at the rate of six percent per annum from the due date of the tax to the date of payment.

If you do not agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with the Internal Revenue Agent in Charge, Los Angeles, California, within thirty days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration and, if you so request, an opportunity for a hearing in the office of the Internal Revenue Agent in Charge will be granted you prior to final determination of any deficiency against you. This letter is not a final notice of deficiency, and this office will be pleased to answer any questions which may occur to you in your examination of the enclosed statement.

Should you fail to pay the additional tax to the collector of internal revenue or to file with this office within the thirty-day period mentioned either a waiver on the enclosed form or to file with [13] the Internal Revenue Agent in Charge a written protest, final determination of your tax liability will be made and a notice of deficiency will be sent to you in accordance with the provisions of law applicable to the assessment and collection of gift tax deficiencies.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

D. S. BLISS,

Deputy Commissioner.

Enclosures:

Statement.

Form of waiver.

Form of acknowledgment. [14]

MT-ET-GT-474-32-33-34-35-6th California

Donor—Jack L. Warner

STATEMENT

1932

	Returned	Tentatively Determined
Total gifts, 1932.....	\$ 6,714.18	\$26,723.22
Less exclusions	0.00	10,000.00
Gross gifts	6,714.18	16,723.22
Less specific exemption.....	6,714.18	6,714.18
Net gifts, 1932.....	0.00	10,009.04
Tax on net gifts, 1932.....		75.14
Tax assessed on return.....		0.00
Deficiency		\$ 75.14

The deficiency results from the following adjustments:

SCHEDULE B

An examination of the trust agreement created on May 26, 1932, wherein Albert Warner is named as grantor, discloses that under Article 5 Harry M. Warner, Jack L. Warner and Stanleigh P. Friedman, and the survivors and survivor of them shall have the right and power at any time to alter, amend or revoke the trust instrument. In case the trust is revoked in whole or in part to the extent as to which the trust is revoked shall be transferred to you, or to your estate if deceased. Since you, and not Albert Warner, appear to be the actual settlor of this trust, and, accordingly, as Harry M. Warner and Stanleigh P. Friedman are persons not having a substantial adverse interest in the disposition of the trust property or income therefrom, it is the opinion of this office that the trust is revocable insofar as you are concerned, and the income paid to the beneficiaries under the trust, other than yourself, represents gifts by you of the actual amount received by the beneficiaries each year.

Income during 1932 from June 6 to
December 31, 1932 paid to Irma
Warner

0.00 10,004.52

[15]

Returned

Tentatively
Determined

Income during 1932 from June 6 to
December 31, 1932 paid to Jack
M. Warner

0.00 10,004.52

Tentatively
Determined

Returned

Exclusions 10,000.00

0.00

To balance (amount of increase).....\$10,009.04

1933

	Returned	Tentatively Determined
Total gifts, 1933.....	\$21,591.90	\$57,140.88
Less exclusions	0.00	10,000.00
Gross gifts	21,591.90	47,140.88
Less specific exemption.....	21,591.90	21,591.90
Net gifts, 1933.....	0.00	25,548.98
Net gifts for preceding years.....	0.00	10,009.04
Total net gifts.....	0.00	35,558.02
Tax on total net gifts.....		616.74
Tax on net gifts for preceding years		75.14
Tax on net gifts, 1933.....		541.60
Tax assessed on return.....		0.00
Deficiency		541.60

The deficiency is due to the increase in net gifts for preceding years as shown above, and to the following adjustments for the calendar year 1933:

SCHEDULE B

Income during 1933 paid to Irma Warner under trust dated May 26, 1932	0.00	17,774.49
Income during 1933 paid to Jack M. Warner under trust dated May 26, 1932	0.00	17,774.49

[16]

	Tentatively Determined	Returned
Exclusions	\$10,000.00	\$ 0.00
To balance (amount of increase).....	25,548.98	

1934

For the purpose of arriving at the total gifts for the subsequent years, the following computation shows the correct net gifts for 1934:

	Returned	Corrected Computation
Total gifts, 1934.....	\$82,482.00	\$126,850.67
Less exclusions	40,000.00	40,000.00
Amount included	42,482.00	86,850.67
Less specific exemption.....	42,482.00	21,693.92
Net gifts, 1934.....	0.00	65,156.75
Net gifts for preceding years.....		35,558.02
Total net gifts.....		100,714.77

In view of the fact that the statutory period within which an assessment may be made for this calendar year has expired, no additional tax is proposed on the basis of the net gifts as above corrected.

The correct net gifts for 1934 are determined as follows:

Determined in Bureau letter of August 13, 1937	32,379.41
Income during 1934 paid to Irma Warner under trust dated May 26, 1932 (not reported)	21,581.76
Income during 1934 paid to Jack M. Warner under trust dated May 26, 1932 (not reported).....	21,195.58
Total gifts not reported or considered in Bureau letter of August 13, 1937	42,777.34
Less exclusions for above gifts.....	10,000.00
Amount increased over Bureau letter of August 13, 1937.....	32,777.34
Correct net gifts for 1934.....	\$65,156.75

1935

	Returned	Tentatively Determined
Total gifts, 1935.....	\$22,014.78	\$57,274.56
Less exclusions	5,000.00	10,000.00
Amount included	17,014.78	47,274.56
Less specific exemption.....	0.00	0.00
Net gifts, 1935.....	17,014.78	47,274.56
Net gifts for preceding years.....	5,665.23	100,714.77
Total net gifts.....	22,680.01	147,989.33
Tax on total net gifts.....	285.30	8,519.04
Tax on net gifts for preceding years...	0.00*	4,264.33
Tax on net gifts, 1935.....	285.30	4,254.71
Tax assessed on return.....		285.30
Deficiency.....		3,969.41

*None computed—should be \$42.49.

The deficiency is due to the increase in net gifts for preceding years as shown above, and to the following adjustments for the calendar year 1935:

SCHEDULE A

Income during 1935 from trust dated May 26, 1932 by Albert Warner as grantor paid to Irma Warner.....	0.00	16,678.18
Income during 1935 from trust dated May 26, 1932 by Albert Warner as grantor paid to Jack M. Warner.....	0.00	18,581.60
	Tentatively Determined	Returned
Exclusions	10,000.00	5,000.00
To balance (amount of increase).....	\$30,259.78	

[Endorsed]: U. S. B. T. A. Filed March 8, 1939.

[18]

[Title of Board and Cause.]

ANSWER

Comes now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Denies the allegations contained in paragraph 3 of the petition.

4. (a), (b) and (c). Denies the allegations of error contained in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5. (a) to (e), inclusive. Denies the allegations contained in subparagraphs (a) to (e), inclusive, of paragraph 5 of the petition. [19]

6. Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the petition be de-

nied and that the respondent's determination be in all respects approved.

(Signed) J. P. WENCHEL

FTH

Chief Counsel

Bureau of Internal Revenue

Of Counsel:

ALVA C. BAIRD

FRANK T. HORNER

Special Attorneys,

Bureau of Internal Revenue

FTH/W 4/14/39

[Endorsed]: U. S. B. T. A. Filed Apr. 19, 1939.

[20]

[Title of Board and Cause.]

AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for amended answer to the petition filed in the above-entitled proceeding admits, denies, avers and alleges as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Denies the allegations contained in paragraph 3 of the petition.

4.(a), (b), and (c). Denies that the Commissioner erred as alleged in subparagraphs (a), (b), and (c) of paragraph 4 of the petition.

5.(a) to (e), inclusive. Denies the allegations contained in subparagraphs (a) to (e), inclusive, of paragraph 5 of the petition.

6. As alternative to the determination by the Commissioner of Internal Revenue that the amounts of income received by the trust and paid to the beneficiaries during each of the years in question under the trust indenture executed by Albert Warner on May 26, 1932, are taxable in each of said years to the petitioner as gifts by him of said amounts to the said beneficiaries in each of the said years, avers that the amounts of income received by the trust and paid to the beneficiaries during each of the years in question under the trust indenture executed by the petitioner, Jack L. Warner, on May 26, 1932, are taxable in each [21] of said years to the petitioner as gifts by him of said amounts to the said beneficiaries in each of the said years.

7. In support of the foregoing alternative averment contained in paragraph 6 hereof, avers and alleges as follows:

(a). On May 26, 1932, the petitioner, Jack L. Warner, executed a trust indenture, and thereafter delivered it, together with the securities constituting the corpus thereof, to Central Hanover Bank and Trust Company, Harry M. Warner, Albert Warner, Jack L. Warner, and Stanleigh P. Friedman, as trustees.

(b). The income received by the trust and paid to the several beneficiaries under the aforesaid trust during each of the following years was as follows:

	Rea Warner	Doris Warner (Leroy)	Betty Warner
1932: (October 17)	\$20,009.03	\$10,004.53	\$10,004.53
1933: (April 17)	18,729.89	9,364.94	9,364.83
(October 17)	16,872.24	8,409.56	8,409.67
	<hr/>	<hr/>	<hr/>
	35,602.13	17,774.50	17,774.50
1934: (April 17)	21,486.20	10,821.13	10,821.03
(October 16)	20,980.51	10,605.37	10,605.42
	<hr/>	<hr/>	<hr/>
	42,466.71	21,426.50	21,426.45
1935: (April 16)	18,185.17	9,290.85	9,174.28
(October 16)	17,427.76	8,844.30	8,850.30
	<hr/>	<hr/>	<hr/>
	\$35,612.93	\$18,135.15	\$18,024.58

(c). Under the terms of the aforesaid trust indenture, the receipt of income thereunder by the aforesaid beneficiaries was dependent in each of the aforesaid years upon the non-exercise of a power to alter, amend or revoke the said trust and the interests created thereunder.

(d). A completed gift of the income of the aforesaid trust was made in each year upon the receipt of said income by the trust and payment [22] of the said income to the aforesaid beneficiaries.

(e). The aforesaid amounts of income received by the trust and paid to the beneficiaries under the said trust indenture in each of the said years constituted gifts by the petitioner of those amounts to the beneficiaries in each of the said years.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the determination of the Commissioner be approved, or, in the alternative, that the petitioner's appeal be denied and that the Board redetermine the deficiencies in the amounts determined by the Commissioner plus such additional amounts as may result from the alternative position stated in this amended answer, to which additional amounts claim is hereby made.

J. P. WENCHEL

ECA

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

E. O. HANSON,

Division Counsel.

BENJAMIN M. BRODSKY,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: U. S. B. T. A. Filed at hearing
Apr. 4, 1940. [23]

[Title of Board and Cause.]

REPLY TO AMENDED ANSWER

Comes now the Petitioner by his attorney, Stanleigh P. Friedman, and for reply to the amended answer filed by the Respondent in the above entitled proceeding, admits and denies as follows:

6: Denies the allegations contained in paragraph "6" of the amended answer.

7:(a) Admits the allegations of fact contained in paragraph 7(a) of the amended answer.

(b) Admits the allegations of fact contained in paragraph 7(b) of the amended answer.

(c) Denies the allegations contained in paragraph 7(c) of the amended answer. [24]

(d) Denies the allegations contained in paragraph 7(d) of the amended answer.

(e) Denies the allegations contained in paragraph 7(e) of the amended answer.

STANLEIGH P. FRIEDMAN

[Endorsed]: U. S. B. T. A. Filed at hearing Apr. 4, 1940. [25]

[Title of Board and Cause.]

AMENDMENT TO PETITION

Pursuant to leave first had and obtained, petitioner files this amendment to his petition in this cause.

4-(d) Respondent has erred in his computation of the amount of the net gifts made by petitioner in each of the years 1932, 1933, 1934 and 1935, which results from his failure to correctly determine the number of statutory exclusions and the amount of the exemption allowable for each of the several years.

5-(f) Petitioner is advised and believes and therefore avers that regardless of any redetermina-

tion by the Board on the issues raised in this proceeding, petitioner is entitled to exclusions as follows:

For the year 1932.....\$6,714.18

(representing premiums paid during the calendar year by the petitioner for policies of life insurance [26] upon his life duly transferred to and held by the trustees under Life Insurance Trust of which there were two beneficiaries)

For the year 1933.....\$10,000.

For the year 1934..... 10,000.

For the year 1935..... 10,000.

(representing part of the amount of premiums paid by petitioner in each of the foregoing years for policies of life insurance upon his life duly transferred to and held by the trustees under Life Insurance Trust of which there were two beneficiaries)

5-(g) In the alternative, petitioner is advised and believes and therefore avers that if the respondent prevails in the contentions set forth in the paragraphs "6" and "7" of his amended answer filed herein, petitioner is entitled to the following exclusions in addition to those claimed in paragraph 5-(f) hereof, to wit:

For each of the years 1933, 1934 and 1935 petitioner is entitled to three exclusions aggregating

gating \$15,000. due to the fact that such a re-determination would recognize three additional donees of alleged gifts by petitioner.

STANLEIGH P. FRIEDMAN

Attorney for Petitioner [27]

State of California,

County of Los Angeles—ss.

Jack L. Warner being duly sworn, says that he is the petitioner above named; that he has read the amendment to petition or had the same read to him; that he is familiar with the statements therein contained and that the facts therein stated are true, except such facts as are stated to be upon information and belief, and those facts he believes to be true.

JACK L. WARNER

Subscribed and sworn to before me this 12th day of April, 1940.

C. H. WILDER

Notary Public.

[Endorsed]: U. S. B. T. A. Filed April 15, 1940.

[28]

[Title of Board and Cause.]

ANSWER TO AMENDMENT TO PETITION

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amendment to petition filed in the above-entitled

proceeding admits, denies, avers and alleges as follows:

4-(d). Denies that the Commissioner erred as alleged in subparagraph (d) of paragraph 4 of the amendment to petition.

5-(f) and (g). Denies the allegations contained in subparagraphs (f) and (g) of paragraph 5 of the amendment to petition.

8. Avers that the Commissioner has erred in allowing two exclusions aggregating \$10,000 for each of the years 1932, 1933, 1934 and 1935 with respect to the trust indenture dated May 26, 1932, in which Albert Warner is named as grantor and Jack L. Warner, Irma Warner and Jack M. Warner are named as beneficiaries.

9. In support of the foregoing averment contained in paragraph 8 hereof, avers and alleges as follows:

(a) In the notice of deficiency issued by the Commissioner two exclusions, aggregating \$10,000, were allowed with [29] respect to the aforesaid trust indenture. Under the facts and circumstances with reference to the aforesaid trust referred to in paragraph 8 hereof, only one exclusion of \$5,000 is allowable.

Denies generally and specifically each and every allegation contained in the amendment to petition not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Board redetermine the

deficiencies in the amounts determined by the Commissioner, plus such additional amounts as may result from the alternative position stated in the amended answer heretofore filed in this proceeding, and the affirmative position stated in this answer to the amendment to petition, to which additional amounts claim is hereby made

J. P. WENCHEL

ECH

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

E. O. HANSON,

Division Counsel,

BENJAMIN M. BRODSKY,

Special Attorney,

Bureau of Internal Revenue.

BMB:GEM 4/20/40

[Endorsed]: U. S. B. T. A. Filed Apr. 23, 1940.

[30]

[Title of Board and Cause.]

REPLY TO ANSWER
TO AMENDMENT TO PETITION.

Comes now the petitioner by his attorneys Stanleigh P. Friedman and Lawrence A. Baker and for reply to the answer to amendment to petition filed by the respondent in the above-entitled proceeding admits and denies as follows:

8. Denies the allegations contained in paragraph 8 of the answer to amendment to petition.

9. Admits the allegation in paragraph 9-(a) that in the notice of deficiency issued by the respondent two exclusions aggregating \$10,000 were allowed but denies each and every other allegation of said paragraph.

Denies generally and specifically each and every allegation contained in the answer to amendment to petition not hereinbefore specifically admitted, qualified or denied.

STANLEIGH P. FRIEDMAN,
LAWRENCE A. BAKER,
Attorneys for Petitioner.

[Endorsed]: U.S.B.T.A. Filed Apr. 30, 1940. [31]

[Title of Board and Cause.]

STIPULATION OF FACTS.

It is hereby stipulated and agreed between the Commissioner of Internal Revenue and the above-named taxpayer, by their respective undersigned attorneys, that the following facts are conceded to be true with like force and effect as though the facts herein conceded to be true were established by competent evidence, subject to the right of either party to contend that any fact herein stipulated is not relevant or material to the questions at issue.

1. On or about May 26, 1932, Albert Warner, a brother of the petitioner herein, executed an Inden

ture of Trust bearing said date. A true copy of said Indenture as executed by the parties thereto is attached hereto as Exhibit "A" and hereby made a part hereof. On or before June 4, 1932, Albert Warner delivered said Indenture to the trustees named therein, including Central [32] Hanover Bank and Trust Company, a banking corporation in New York City, hereinafter referred to as Central Hanover, and delivered to Central Hanover on behalf of all the trustees named therein, certain securities (United States Government obligations) therein named and described of the aggregate face amount of \$2,000,000.

The securities referred to in said Indenture are described by number and amount in a receipt executed and delivered by Central Hanover to Albert Warner on June 4, 1932. A true copy of said receipt is attached hereto as Exhibit "B" and hereby made a part hereof.

2. Upon receipt of said duly executed Indenture of Trust and said securities constituting the corpus of said trust, the trustees duly qualified and entered upon the performance of their duties as trustees under said Indenture, and in compliance with their duties under said Indenture collected the income upon the securities constituting the trust corpus and paid the entire amount thereof, less commissions, to the beneficiaries named in said Indenture, in accordance with the terms thereof.

3. On or about May 26, 1932, Harry M. Warner, a brother of the petitioner herein, executed an In-

denture of Trust bearing said date. A true copy of said Indenture as executed by the parties thereto is attached hereto as Exhibit "C" and hereby made a part hereof. On or before June 4, 1932, Harry M. Warner delivered [33] said Indenture to the trustees named therein, including Central Hanover, and delivered to Central Hanover on behalf of all the trustees named therein, certain securities (United States Government obligations) therein named and described of the aggregate face amount of \$2,000,000.

The securities referred to in said Indenture are described by number and amount in a receipt executed and delivered by Central Hanover to Harry M. Warner on June 4, 1932. A true copy of said receipt is attached hereto as Exhibit "D" and hereby made a part hereof.

4. Upon receipt of said duly executed Indenture of Trust and said securities constituting the corpus of said trust, the trustees duly qualified and entered upon the performance of their duties as trustees under said Indenture, and in compliance with their duties under said Indenture collected the income upon the securities constituting the trust corpus and paid the entire amount thereof, less commissions, to the beneficiaries named in said Indenture, in accordance with the terms thereof.

5. On or about May 26, 1932, Jack L. Warner (the petitioner herein), executed an Indenture of Trust bearing said date. A true copy of said Indenture as executed by the parties thereto is attached

hereto as Exhibit "E" and hereby made a part hereof. On or before June 4, 1932, Jack L. Warner delivered said Indenture to the trustees named therein, including Central Hanover, and delivered to Central Hanover on behalf of all of the trustees [34] named therein, certain securities (United States Government obligations) therein named and described of the aggregate face amount of \$2,000,000.

The securities referred to in said Indenture are described by number and amount in a receipt executed and delivered by Central Hanover to Jack L. Warner on June 4, 1932. A true copy of said receipt is attached hereto as Exhibit "F" and hereby made a part hereof.

6. Upon receipt of said duly executed Indenture of Trust and said securities constituting the corpus of said trust, the trustees duly qualified and entered upon the performance of their duties as trustees under said Indenture, and in compliance with their duties under said Indenture collected the income upon the securities constituting the trust corpus and paid the entire amount thereof less commissions, to the beneficiaries named in said Indenture, in accordance with the terms thereof.

7. All of the individuals named in the aforesaid three Indentures of Trust were alive at all times relevant hereto and are alive at the present time.

8. The income received by the aforesaid trusts and paid to the several beneficiaries under each of

the aforesaid trust during each of the following years was as follows:

Under Indenture of Trust executed by Albert Warner (Exhibit "A" hereof): [35]

	Jack L. Warner	Irma Warner	Jack M. Warner
1932: (October 17)	\$20,009.16	\$10,004.52	\$10,004.52
1933: (April 17)	35,542.25	17,774.49	17,774.49
(October 17)			
1934: (April 17)	42,391.13	21,581.76	21,195.58
(October 16)			
1935: (April 16)	37,174.97	16,678.18	18,581.60
(October 16)			

Under Indenture of Trust executed by Harry M. Warner (Exhibit "C" hereof):

	Albert Warner	Bessie L. Warner
1932: (October 17)	\$30,013.68	\$10,004.52
1933: (April 17)	53,108.55	18,018.08
(October 17)		
1934: (April 17)		
(October 16)	64,051.36	21,233.33
1935: (April 16)		
(October 16)	53,304.27	17,803.54

Under Indenture of Trust executed by Jack L. Warner (Exhibit "E" hereof):

	Rea Warner	Doris Warner (Leroy)	Betty Warner
1932: (October 17)	\$20,009.03	\$10,004.53	\$10,004.63
1933: (April 17)	35,602.13	17,774.50	17,774.50
(October 17)			
1934: (April 17)	42,466.71	21,426.50	21,426.45
(October 16)			
1935: (April 16)	35,612.93	18,135.15	18,024.58
(October 16)			

The aforesaid payments to the said beneficiaries were treated for Federal income tax purposes as the taxable income of the said beneficiaries.

9. At the time of the execution of the Trust Indentures referred to in paragraphs 1, 3 and 5 hereof, Harry M. Warner was 50 years of age and resided in Mount Vernon, New York, together with his wife, Rea Warner and his two daughters, Doris Warner (now Doris Warner LeRoy), who was born on September 13, 1912, and Betty Warner (now Betty Warner Sperling), who was born on May 4, 1920; Albert Warner was 48 years of age and resided in New York, N. Y., with his wife, Bessie L. Warner, and there has been no issue of said marriage; Jack L. Warner was 41 years of age and resided in Los Angeles, California, with his then wife, Irma Warner (from whom he has since been divorced), and Jack M. Warner, the only issue of said marriage, who was born on March 28, 1916. Lita Warner, who is referred to in Exhibit "C" hereof, is the daughter of Samuel L. Warner (brother of Harry, Albert and Jack L., who was deceased at the time of the creation of these trusts), and was born on October 10, 1926.

10. The aforesaid three Warner brothers, Harry, Albert and Jack L. (sometimes herein referred to as the "three Warner brothers" or the "three brothers"), are the principal executive officers of Warner Bros. Pictures, Inc., a Delaware corporation which acquired in 1923 the assets of a partnership composed of the three Warner brothers and

their brother Samuel L. (now deceased), [37] in consideration of the issuance to said partnership of all of the stock of said corporation. The corporation continued the business of the partnership in the production and distribution of motion pictures, and since 1926 has been the producer, distributor and exhibitor of talking motion pictures.

From 1928 until his death on April 4, 1931, Lewis Warner, the only son of Harry M. Warner, was an employee and officer of Warner Bros. Pictures, Inc., and was regarded by his father and uncles as their ultimate successor to represent the interests of the family in the corporation.

11. From January, 1926, through the first half of the year 1930, the business of Warner Bros. Pictures, Inc., rapidly expanded, the capital structure was enlarged to accord with such expansion, and the securities issued by the corporation became increasingly valuable. The common stock of the corporation was quoted as follows on the New York Stock Exchange (the quotation being the mean between the high and low quotations in the periods shown):

Date	Market Quotation
January, 1926	\$15.
September, 1926	70.
May, 1927 to April, 1928.....	35. and \$30.
September and October, 1928.....	138.
March, 1929	100.
(After 2 for 1 split)	
November, 1929	30.
March, April, May, 1930.....	80.
June, 1930	45.
August, 1930	25.
September, 1930	20.
June, 1931	5.
May, 1932	75 cents

[38]

12. During 1928 and 1929, each of the three Warner brothers, by virtue of holdings originally acquired by him, was the holder of Warner Bros. Pictures, Inc., securities having a very substantial market value.

13. The Warner brothers desired to obtain greater economic security in respect of their private fortunes, substantially all of which was represented by securities of Warner Bros. Pictures, Inc. They believed this purpose would be effectuated by improving their cash position, which would enable them to lend funds to the corporation as and when needed. Consequently, during 1928, 1929 and 1930, the three brothers disposed of substantial blocks of common stock, resulting in the accumulation of large cash reserves, which from time to time were made available to assist the corporation by loans aggregating at times between five and six million dollars.

The increasing profit in the operation of its business during the years 1929 and 1930, made it possible for Warner Bros. Pictures, Inc., to repay to the Warner brothers substantial parts of the aforesaid moneys and the balance thereof was practically entirely liquidated by new financing which the corporation obtained in September, 1930. With Warner Bros. Pictures, Inc., apparently "straightened out" financially after the refinancing, the Warner brothers, realizing the speculative character of the business and desiring to segregate a part of [39] their resources and remove the same from the hazards of the motion picture business as it then existed, began in March, 1930, to invest their cash reserves in United States Government obligations.

14. During the year 1925, the Warner brothers, together with their brother, Samuel L. Warner, who died in October 1927, formed a personal holding company called Renraw, Inc., under the laws of the State of New York, with a capital of 500 shares, 125 shares being taken by each of the four brothers. Upon the death of Samuel L. Warner, each of the three Warner brothers acquired one-third of his 125 shares in the company. On July 27, 1929, 60,000 shares of preferred stock of Renraw, Inc., were issued to the Warner brothers for \$6,000,000 in cash (which had been acquired by them through the sale of blocks of common stock of Warner Bros. Pictures, Inc.), each brother taking 20,000 shares thereof, and common stock was issued in equal parts to the three Warner brothers, in exchange

for their prior holdings of Common stock. The three brothers in July, 1929, agreed that no one or more of them would sell, transfer, hypothecate or exchange the stock owned by him in Renraw, Inc., without the prior written consent of the others.

In 1928, 1929 and 1930, the funds of Renraw, Inc., were employed partially in furtherance of the purposes referred to in the first sub-paragraph of paragraph "13" hereof, viz., [40] in loans to Warner Bros. Pictures, Inc., Renraw, Inc., being the medium through which the Warner brothers made the loans referred to in said subparagraph.

When Warner Bros. Pictures, Inc., repaid the said loans, Renraw, Inc., employed the funds so released in furtherance of the purposes referred to in the second subparagraph of paragraph "13" hereof, viz., in the purchase of United States Government obligations, Renraw, Inc., being the medium through which the Warner brothers made the purchases referred to in said subparagraph.

15. Renraw, Inc., was regarded by the Warner brothers as providing a holding company for holding the said United States Government obligations and other personal investments, and Lewis Warner was regarded by his father and uncles as the member of the family who, by virtue of his contemplated control of Renraw, Inc., would take care of the wives and children of the Warner brothers.

The death of Lewis on April 4, 1931, was a great shock to his father and had an important effect upon the plans of his father and uncles in the

arrangement of their fortunes. They could no longer look to Lewis as the one who might be expected to take care of the wives and children of the Warner family and to be the ultimate representative of the family interests in Warner Bros. Pictures, Inc. Accordingly, the Warner [41] brothers began discussions among themselves and their advisors, including Mr. Samuel Schneider, concerning the best means to be employed by them to insure the financial security of themselves and their families, and to protect that security against the exigencies and hazards of the business in which the bulk of their fortunes was invested, the speculative character of which is indicated by the fluctuations in the market values of the stock referred to in paragraph "11" hereof.

Acting through Mr. Schneider, they investigated the facilities for trust administration and were advised to consult representatives of Central Hanover, an institution which administered many trusts.

The foregoing discussions led to a decision in December, 1931, that trusts should be established, and steps were then taken to reduce the capitalization of Renraw, Inc., by the Warner brothers surrendering to it the 60,000 shares of preferred stock (20,000 each) and liquidation to the brothers equally of United States Government obligations of the face amount of \$5,600,000 and other assets of Renraw, Inc., making up the difference of \$400,000. The securities so distributed to the three brothers plus \$400,000 face amount of United States Govern-

ment obligations acquired at about that time made up the \$6,000,000 par value of United States Government obligations, \$2,000,000 of which belonged to each brother and was [42] delivered as the corpus of each trust referred to in paragraphs 1, 3 and 5 hereof. In December, 1931, each of the three Warner brothers owned a one-third interest in Renraw, Inc.

16. The Warner brothers decided that the aforesaid \$6,000,000 which ultimately became the corpora of the three trusts (Exhibits A, C and E) should be secured from the hazards of the business, secured against the actions of the brothers themselves and each other and the members of their respective immediate families, and secured for the protection of the brothers' wives and children.

17. When the Warner brothers decided that trusts were to be established to achieve these general objectives, the decision included the creation of a trust by each of the Warner brothers, identical as to corpus and otherwise substantially identical except as to beneficiaries, and they immediately sent for their personal counsel, Mr. Stanleigh P. Friedman, and explained to him the objectives desired and arranged for the representatives of Central Hanover to cooperate with him in the preparation of definitive papers.

If Stanleight P. Friedman were called as a witness he would testify in substance as follows concerning himself and his relationship to the Warner brothers and their families. He is a member of the

Bar of the State of New York and the Supreme Court of the United States and a graduate of Yale [43] University and Harvard Law School and was admitted to practice in the State of New York in 1907 and has continued to practice in that state since his graduation from Law School in 1908. He has been the advisor and counsel of the Warner brothers personally and of the corporations in which they have been interested and of members of their families from 1912 to the present time. He believes that he has at all times enjoyed the confidence and affection of the members of the Warner family.

After the decision had been reached to create trusts, and during the course of discussions between the Warner brothers and counsel, it was decided that reciprocal trusts would be created by the Warner brothers to carry out the aforesaid general objectives.

18. If Stanleight P. Friedman and the legal representatives of Central Hanover were called as witnesses, they would testify in substance as follows: That as far as the form of the trusts was concerned they advised the Warner brothers that the trusts be drawn and executed as they were finally drawn and executed, in order to secure a "maximum of irrevocability", to make it impossible for any one of the brothers to "invade the corpus", to exclude any "possibility of reverter" of the corpus of any trust to the grantor named therein, to eliminate the grantor named in each trust indenture from becoming a possible income beneficiary, to provide that in the event of the death of one of the

brothers his widow and children would not be subject to the influence of the remaining two brothers alone, [44] because each brother had his own idea of policy and was not willing to subject his estate to different philosophies of investment of the surviving brothers alone, and to minimize and avoid estate taxes, which counsel believed might be due under some different form of trust procedure. Counsel also suggested that the trusts be created before the gift tax provisions in the Revenue Bill of 1932 became enacted into law as part of the Revenue Act of 1932.

19. In the notice of deficiency duly mailed to the petitioner herein, the Commissioner has determined that the amounts of income received by the trustees and paid to the beneficiaries (other than the petitioner herein) during each of the years in question, under the Indenture of Trust executed by Albert Warner (Exhibit "A" hereof) are taxable in each of said years to the petitioner as gifts by him of said amounts to said beneficiaries in each of the said years.

In that determination the Commissioner has not included in taxable gifts of the petitioner the income received by the aforesaid trust and paid during the said years to the petitioner.

In his amended answer, the Commissioner has raised the alternative contention that the amounts of income received by the trust and paid to the beneficiaries during each of the years in question, under the Indenture of Trust [45] executed by Jack L. Warner, the petitioner herein (Exhibit "E"

hereof), are taxable in each of said years to the petitioner as gifts by him of said amounts to said beneficiaries in each of the said years.

The petitioner denies that the amounts of income received by either of the aforesaid trusts and paid to the beneficiaries thereunder during the said years are taxable in any of the said years to the petitioner as gifts by him of said amounts to said beneficiaries in any of the said years.

20. On or about May 26, 1932, Jack L. Warner (the petitioner herein) executed an Indenture of Trust bearing said date. A true copy of said Indenture as executed by the parties thereto is attached hereto as Exhibit "G" and hereby made a part hereof. On or before June 4, 1932, Jack L. Warner delivered said Indenture to the trustees named therein, including Central Hanover, and delivered to Central Hanover on behalf of all the trustees named therein, certain life insurance policies on the life of said Jack L. Warner, as named and described in Schedule "A" of the said Indenture.

21. On March 19, 1935, the aforesaid Indenture, (Exhibit "G") was duly amended so as to eliminate from the said Indenture all provisions and benefits, direct or indirect, in that trust provided for the benefit of Irma Warner or in her favor, and thereafter Jack M. Warner was the sole beneficiary of said trust. [46]

22. During the years 1932, 1933, 1934 and 1935, no income was received or paid out to the beneficiaries by the aforesaid trust (Exhibit "G").

23. In his gift tax returns for the aforesaid years the petitioner included as taxable gifts the amounts which he paid as premiums on the life insurance policies which constituted the corpus of the aforesaid trust, and no question is raised in this proceeding as to said inclusion.

24. Petitioner's gift tax return for the year 1932 showed the following:

Gross gifts made during the calendar year:

1. Premium on life insurance policies (Date of gift—8-9-32 to 12-5-32).....	\$ 6,714.18
Less total exclusions not exceeding \$5,000 for each donee (except future interests).....	None

Gross gifts for year.....\$ 6,714.18

Specific exemption claimed (not exceeding \$50,-
000 less total amount of specific exemption
claimed for preceding years)..... 6,714.18

Amount of net gifts made during calendar year None

Petitioner's gift tax return for the year 1933 showed the following: [47]

Gross gifts made during calendar year:

1. Premiums on life insurance policies (Date of gift—1-9-33 to 12-30-33).....	\$21,591.90
--	-------------

Less total exclusions not exceeding \$5,000 for
each donee (except future interests)..... None

Gross gifts for year.....\$21,591.90

Specific exemption claimed (not exceeding \$50,-
000 less total amount of specific exemption
claimed for preceding years)..... 21,591.90

Amount of net gifts made during calendar year None.

Petitioner's gift tax return for the year 1934 showed the following:

Gifts during year other than charitable, public and similar gifts:

1. \$38,000. Principal amount Warner Bros. Pictures, Inc., 6% Debentures Series 1939 (Jos. H. Hazen) (Date of gift—1-5-34).....	\$15,580.00
2. \$24,000. Principal Amount Warner Bros. Pictures, Inc., 6% Debentures Series 1939 (Harold S. Bareford) (Date of gift—1-5-34).....	9,840.00
3 and 4. Mr. and Mrs. Mervyn LeRoy-Wedding Gifts ($1\frac{1}{2}$ or \$7,500 to each) (Date of gift—3-8-34) and (4-5-34).....	15,000.00
5. H. M. Warner (Date of gift—3-1-34 and 9-1-34)	(5,000.00 5,000.00)
6. Albert Warner (Date of Gift—3-1-34 and 9-1-34)	(5,000.00 5,000.00)
7 and 8. Central Hanover Bank & Trust Co. et al., Trustees under Insurance Trust Indenture dated May 26, 1932. Donor paid life insurance premiums (net) on policies assigned to Trustees. There are two donee beneficiaries of said trusts. (Date of gift—various)	22,062.00
Total.....	\$82,482.00

[48]

Forward.....\$82,482.00

Less total exclusions not exceeding \$5,000 for each donee (except future interests) (Eight donees)

40,000.00

Included amount of gifts for year other than charitable, etc. gifts.....

\$42,482.00

Specific exemption claimed (not exceeding \$50,000 less total amount of specific exemption claimed for preceding years).....

42,482.00

Amount of net gifts for year..... None

Adjustments were made by the Commissioner to the aforesaid gift tax return for 1934, and a notice of deficiency was mailed to the petitioner determining a deficiency in gift tax on the basis of such adjustments. When no appeal was taken to the Board of Tax Appeals from the said determination of deficiency, the gift tax deficiency so determined was assessed. The following schedule shows the said adjustments made by the Commissioner:

	<u>Returned</u>	<u>Determined</u>
Total Gifts—1934	\$82,482.00	\$84,073.33*
Less exclusions	40,000.00	30,000.00
Amount included	42,482.00	54,073.33
Less specific exemption.....	42,482.00	21,693.92
Net gifts—1934	0.00	32,379.41
Tax on net gifts.....	0.00	521.38
Tax assessed on return.....		0.00
Deficiency		521.38

*This increase resulted from uncontested increases in the amounts of the gifts shown as items 1 and 2 on the gift tax return for 1934.

[49]

The following explanatory statements were made by the Commissioner with reference to the aforesaid determination:

“Two exclusions in the amount of \$10,000, claimed with respect to the premiums paid on the life insurance policies placed in trust under the trust indenture dated May 26, 1932, are disallowed. As it appears that no payments will be made to the beneficiaries of the trust until your

death, the gifts are considered to be gifts of future interests, against which no exclusions are allowable.

“Specific exemption in the amount of \$21,-693.92 is allowed, the remainder of the specific exemption provided by statute having been claimed by you on returns filed for the calendar years 1932 and 1933.”

Petitioner's gift tax return for the year 1935 showed the following:

Schedule A.—Gifts during year other than charitable, public, and similar gifts:

1. Life Insurance Premiums on Policies payable to a beneficiary under Trust Indenture as amended March 19, 1935—Central Hanover Bank and Trust Company of New York, Trustees. (Date of gift—1935).....\$22,014.78

Less total exclusions not exceeding \$5,000 for each donee (except future interests)—

One donee 5,000.00

Included amount of gifts for year other than charitable, etc., gifts..... 17,014.78

Schedule C.—Returns, amounts of specific exemption, and net gifts for preceding years (subsequent to June 6, 1932): [50]

<u>Calendar Year</u>		<u>Amount of Specific Exemption</u>	<u>Amount of Net Gifts</u>
1932	\$6,714.18 (2) donee deductions \$		None
1933	21,591.90 (2) donees “		
	10,000.00	11,591.90	None
1934	84,073.33		
	40,000.00 less for (8) donees.....	38,408.10	5,665.23
	<u>44,073.33</u> Balance		
<hr/>			
Total amount of specific exemption claimed for preceding years.....		\$50,000.00	
Total amount of net gifts for preced- ing years			5,665.23

Computation of amount of net gifts for year:

1. Amount of gifts for year other
than charitable, etc., gifts.....\$17,014.78
2. Amount of charitable, public and
similar gifts for year..... None
3. Total amount of gifts for year..... \$17,014.78
4. Amount of charitable, public and
similar gifts for year.....\$ None
5. Specific exemption claimed (not
exceeding \$50,000, less total
amount of specific exemption
claimed for preceding years)..... None
6. Total deductions None
7. Amount of net gifts for year..... \$17,014.78

Computation of tax:

1. Amount of net gifts for year.....	\$17,014.78
2. Total amount of net gifts for preceding years.....	5,665.23
3. Total net gifts.....	22,680.01
4. Tax computed on item 3.....	285.30
5. Tax computed in item 2 (no payment yet made)	None
6. Tax on net gifts for year.....	285.30

STANLEIGH P. FRIEDMAN

Attorney for Petitioner

J. P. WENCHEL

ECA

Chief Counsel, Bureau of Inter-
nal Revenue. [52]

EXHIBIT "A"

This trust indenture made the 26th day of May, 1932, between Albert Warner, as Grantor, and Harry M. Warner, Albert Warner, Jack L. Warner, Stanleigh P. Friedman and Central Hanover Bank and Trust Company, a corporation organized and existing under the banking laws of the State of New York, as Trustees,

Witnesseth:

The Grantor is desirous of creating a trust for the purposes and upon the terms and provisions hereinafter set forth. Accordingly, the Grantor has herewith transferred, assigned and conveyed to the Trustees and the Trustees do hereby, by the execu-

tion of these presents, acknowledge receipt from the Grantor of the property described in Schedule A hereto annexed, which, together with any property which may hereafter be conveyed, subject to the trusts hereby created, to the Trustees by the Grantor or by any other person, all of which is hereinafter collectively termed the trust estate, shall be held and disposed of by the Trustees and the survivors or survivor of them and their successors and assigns upon the following trusts, namely:

1. (a) The Trustees shall hold, manage, invest and from time to time reinvest the trust estate.

(b) The Trustees shall set aside such portion of the trust estate as shall equal at the market value thereof at the time of setting aside the same one-quarter thereof and shall hold the same in trust for Irma Warner, wife of Jack L. Warner, hereinafter called Irma, paying over to her the entire net annual income therefrom in each year during her life, and upon the death of Irma, in case Jack L. Warner, hereinafter called Jack shall survive her, the Trustees shall continue to hold said fund in trust for Jack, paying over to him the entire net annual income therefrom in each year during his life and upon his death, he having survived Irma, the Trustees shall transfer, assign and pay over the said fund to Jack M. Warner, son of Jack and Nephew of the Grantor, hereinafter calle Jackie, in case he shall survive Jack; or if Jackie shall not survive Jack but shall leave a widow surviving Jack, the Trustees shall transfer, assign and pay over such portion of

said fund as Jackie shall by his last will and testament duly admitted to probate direct to said surviving widow of Jackie, provided, however, that Jackie shall have no right to direct the payment to his said surviving widow of more than such portion of said fund as shall equal at the market value thereof at the time of Jack's death one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount of said fund, in case Jackie shall either leave no widow surviving Jack or shall fail to direct the payment to his widow of any portion of said fund, to the issue of Jackie who shall survive Jack in equal shares, per stirpes and not per capita; or if no issue of Jackie shall survive Jack to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

In case Jack shall not survive Irma but Jackie shall survive her, the Trustees shall continue to hold said fund in trust for Jackie, paying over to him the entire net annual income therefrom in each year during his life and upon the death of Jackie, or upon the death of Irma in case Jackie shall not survive her, if Jackie shall leave a widow then living, the Trustees shall transfer, assign and pay over to the surviving widow of Jackie such portion of said fund as Jackie shall by his last will and testament duly admitted to probate direct, provided

however, that Jackie shall have no right to direct the payment to his said surviving widow of more than such portion of said fund as shall equal at the market value thereof at the time of the death of the survivor of Irma and Jackie one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount thereof, in case Jackie shall either leave no widow then living or shall fail to direct the payment of any portion of said fund to his said surviving widow, to the issue of Jackie who shall be then living in equal shares, per stirpes and not per capita; or if no issue of Jackie shall be then living to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

(c) The Trustees shall set aside such portion of the trust estate as shall equal at the market value at the time of setting aside the same one-quarter thereof, and shall hold the same in trust for Jackie, paying over to him the entire net annual income therefrom in each year during his life, and upon the death of Jackie in case Jack shall survive Jackie, the Trustees shall continue to hold said fund in trust for Jack, paying over to him the entire net annual income therefrom in each year during his life and upon his death, he having survived Jackie, if Jackie shall leave a widow surviving Jack, the Trustees shall transfer, assign and pay over so much of said

fund as Jackie shall by his last will and testament duly admitted to probate direct to the said surviving widow of Jackie, provided, however, that Jackie shall have no right to appoint to his said surviving widow more than such portion of the said fund as shall equal at the market value thereof at the time of Jack's death one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount thereof, in case Jackie shall either leave no widow surviving Jack or shall fail to appoint to his surviving widow any portion of said fund, to the issue of Jackie who shall survive Jack in equal shares, per stirpes and not per capita; or if no issue of Jackie shall survive Jack to Irma, or if Irma shall not survive Jack, to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

In case Jack shall not survive Jackie but Jackie shall leave a widow him surviving, the Trustees shall upon the death of Jackie transfer, assign and pay over so much of said fund as Jackie shall by his last will and testament duly admitted to probate direct to the surviving widow of Jackie, provided, however, that Jackie shall have no right to direct the payment to his said surviving widow of more than such portion of said fund as shall equal at the market value thereof at the time of his death one-quarter thereof, and the Trustees shall upon the death

of Jackie, transfer, assign and pay over the balance of said fund or the entire amount thereof in case Jackie shall either leave no widow him surviving or shall fail to appoint to his surviving widow any portion of said fund to the surviving issue of Jackie in equal shares, per stirpes and not per capita; or if Jackie shall leave no issue him surviving, the Trustees shall continue to hold the same in trust for Irma in case she shall survive Jackie, paying over to her the entire net annual income therefrom in each year during her life, and upon the death of Irma or upon the death of Jackie in case Irma shall not survive Jackie, the Trustees shall transfer, assign and pay over the same to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

(d) The Trustees shall set aside such portion of the trust estate as shall equal at the market value thereof at the time of setting aside the same one-quarter thereof and shall hold the same in trust for Jack, paying over to him the entire net annual income therefrom in each year during his life.

Upon the death of Jack in case Irma shall survive him, the Trustees shall continue to hold said fund in trust for Irma and shall pay over to her the entire net annual income therefrom in each year during her life, and upon her death, she having survived Jack, the Trustees shall transfer, assign

and pay over the said fund to Jackie in case he shall be then living, or if Jackie shall not be then living but shall leave a widow then living the Trustees shall transfer, assign and pay over such portion of said fund as Jackie shall by his last will and testament duly admitted to probate direct to said surviving widow of Jackie, provided, however, that Jackie shall have no right to direct the payment to his said surviving widow of more than such portion of said fund as shall equal at the market value thereof at the time of the death of Irma one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount thereof, in case Jackie shall either leave no widow then living or shall fail to appoint to his surviving widow any portion of said fund, to the issue of Jackie who shall be then living in equal shares, per stirpes and not per capita; or if no issue of Jackie shall be then living to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

In case Irma shall not survive Jack, the Trustees shall from and after the death of Jack continue to hold said fund in trust for Jackie in case he shall survive Jack and shall pay over to him the entire net annual income therefrom in each year during his life, and upon the death of Jackie or upon the death of Jack in case Jackie shall not survive Jack,

if Jackie shall leave a widow then living the Trustees shall transfer, assign and pay over such portion of said fund as Jackie shall by his last will and testament duly admitted to probate direct to the said surviving widow of Jackie, provided, however, that Jackie shall have no right to direct the payment to his said surviving widow of more than such portion of said fund as shall equal at the market value thereof at the time of the death of the survivor of Jack and Jackie one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount thereof, in case Jackie shall either leave no widow then living or shall fail to appoint to his surviving widow any portion of said fund, to the issue of Jackie who shall be then living in equal shares, per stirpes and not per capita; or if no issue of Jackie shall be then living to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

(e) The Trustees shall set aside such portion of the trust estate as shall equal at the market value thereof at the time of setting aside the same one-quarter thereof, and shall hold the same in trust for Jack paying over to him the entire net annual income therefrom in each year during his life.

Upon the death of Jack in case Jackie shall survive Jack, the Trustees shall continue to hold said fund in trust for Jackie and shall pay over to him

the entire net annual income therefrom in each year during his life and upon the death of Jackie, he having survived Jack, if Jackie shall leave a widow him surviving the Trustee shall transfer, assign and pay over so much of said fund as Jackie shall by his last will and testament duly admitted to probate direct to the said surviving widow of Jackie, provided, however, that Jackie shall have no right to appoint to his said surviving widow more than such portion of said fund as shall equal at the market value thereof at the time of his death one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount thereof, in case Jackie shall either leave no widow him surviving or shall fail to appoint any portion of said fund to his said surviving widow, to the surviving issue of Jackie in equal shares, per stirpes and not per capita; or if Jackie shall leave no issue him surviving, to Irma or if she shall not survive Jackie to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

In case Jackie shall not survive Jack, the Trustees shall upon the death of Jack, if Jackie shall leave a widow surviving Jack, transfer, assign and pay over so much of said fund as Jackie shall by his last will and testament duly admitted to probate direct to the surviving widow of Jackie, provided, however, that Jackie shall have no right to direct

the payment to his surviving widow of more than such portion of said fund as shall equal at the market value thereof at the death of Jack one-quarter thereof, and the Trustees shall transfer, assign and pay over the balance of said fund or the entire amount thereof in case Jackie shall either leave no widow surviving Jack or shall fail to appoint to his surviving widow any portion thereof to the issue of Jackie who shall survive Jack in equal shares, per stirpes and not per capita; or if no issue of Jackie shall survive Jack the Trustees shall hold such portion of said fund, as would have been paid to the issue of Jackie if any issue of Jackie had survived Jack, in trust for Irma paying over to her the entire net annual income therefrom in each year during her life and upon her death or upon the death of Jack in case she shall not survive Jack, the Trustees shall transfer, assign and pay over the same to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same and intestate at that time.

(f) During the minority of any beneficiary, the Trustees may use and apply so much of the net annual income payable to such beneficiary under the provisions hereof, for the benefit, support, education, comfort, welfare and maintenance of such minor beneficiary as they may deem advisable, accumulating any balance of income, and upon such beneficiary attaining the age of twenty-one years,

the Trustees shall transfer, assign and pay over to such beneficiary all the income accumulated for his or her benefit.

(g) Anything herein contained to the contrary notwithstanding, in case any share or portion of the trust estate shall vest in the possession of any minor beneficiary, the Trustees shall retain and shall hold, manage, invest and from time to time reinvest the same and shall use and apply so much of the net annual income therefrom for the benefit, support, education, comfort, welfare and maintenance of such beneficiary as they shall deem advisable, accumulating any balance of income not so used or applied, and upon any such beneficiary attaining the age of twenty-one years, the Trustees shall transfer, assign and pay over to such beneficiary the entire principal of his or her share and all accumulations of income thereon; provided, however, that nothing herein contained shall be deemed to postpone the vesting of any such share or portion and in case any such minor beneficiary shall die before attaining the age of twenty-one years, the principal of his or her share or portion together with all accumulations of income thereon shall form a part of his or her estate and shall be disposed of accordingly.

(h) Instead of making personal application of income for the use of any minor beneficiary, the Trustees may transfer, assign and pay over so much of such income as they may deem advisable to either parent or the guardian of the person or property

of such minor beneficiary to be by him or her applied to the benefit, support, education, comfort, welfare and maintenance of such minor beneficiary. The Trustees shall be fully protected in any payments of income so made to such parent or guardian and shall not be responsible for the same but their whole duty and responsibility shall cease upon the making of any such payment.

2. It shall not be lawful for any beneficiary entitled to receive income under any provision hereof to sell, assign, encumber, charge or dispose of by way of anticipation or otherwise the income payable to any such beneficiary or any part thereof and notwithstanding any such charge, sale, assignment or other disposition, the Trustees are hereby required to pay such income into the proper hands of such beneficiary for his or her separate and peculiar use and benefit, whether married or single, upon his or her own receipt. Nor shall such income or any part thereof be in any wise liable to any claim of any creditor of any such beneficiary.

3. Subject to the restrictions and limitations herein contained, the Trustees and the survivors or survivor of them and their successors and assigns shall have the following powers, authority and discretion, namely:

To continue to hold upon the trusts hereby created any or all of the property herewith or hereafter conveyed to the Trustees. Nevertheless, in case it shall seem to the Trustees advisable so to do, the Trustees may from time to time sell or dispose

of all or any part of the same or of any other property which may at any time constitute the trust estate. The Trustees may invest and from time to time reinvest the proceeds of sale of any of the trust property or any cash held in trust in the public stocks or obligations of the United States of America or of any State thereof, or of any County or City of the following States, namely: New York, New Jersey, Massachusetts, Pennsylvania, Ohio, Illinois, Maine, Rhode Island, Maryland and California, whether or not the same be legal investments for trustees under the laws of the State of New York, and the Trustee shall be so limited and restricted in making any investment or reinvestment of the proceeds of sale of any of the trust property or any cash held in trust, but nothing herein contained shall be construed to prohibit the trustees from retaining in the form in which the same may be invested at the time that the same is conveyed to them any or all of the property herewith or hereafter conveyed to the Trustees.

The Trustees may become a party to any reorganization, consolidation, merger or other capital readjustment of any corporation, the stocks or securities of which may at any time be held in trust. They may participate in any such reorganization, consolidation, merger or readjustment to the same extent and as fully as though they were the absolute and individual owners of such stocks or securities, and may deposit with any committee or depositary, pursuant to any plan or agreement of

reorganization, consolidation, merger or readjustment, any property held in trust and may make payment from the principal of the trust estate of any charges or assessments imposed by the terms of any plan or agreement of reorganization, consolidation, merger or readjustment, and may receive and continue to hold in trust any property allotted to the trust estate by reason of their participation therein, whether or not the same is an investment of the character hereinabove permitted to the Trustees.

The Trustees may exercise conversion or subscription rights appurtenant to any stocks, bonds or other securities at any time held in trust, and may use such portion of the principal of the trust estate as may be necessary therefor, whether or not the property resulting from the exercise of any such right will be an investment of the character hereinabove permitted to the Trustees, or in the discretion of the Trustees may sell any such rights. Investments made through the exercise of any such rights or proceeds received on the sale thereof shall be considered principal.

The Trustees shall not be required to establish any sinking fund to amortize the premium at which any investment or reinvestment may be purchased.

All extraordinary dividends and all realized appreciation in the value of stocks, bonds, securities or other property resulting from the sale or other disposition thereof shall, so far as permitted by law, be considered principal and not income, but

ordinary stock dividends paid regularly by a corporation in lieu of, or in addition to regular cash dividends, shall be considered income and not principal; provided, however, that the 'Trustees' determination as to whether any dividend should be apportioned or allocated in whole or in part to principal or income shall, so far as permitted by law, be conclusive and binding upon all persons now or hereafter interested in the trust estate. The Trustees unless otherwise provided herein, may pay out of the income received from the trust estate all expenses of the trust and all taxes which may be properly assessed against the trust estate or any beneficiary thereof.

The Trustees may hold the trust estate or any part thereof as an undivided whole without separation as between the trusts hereby created, but no such holding shall defer the vesting of any estate in possession, or otherwise, according to the terms hereof. The Trustees may compromise, adjust, settle and compound or submit to arbitration on such terms as may seem advisable to them in their discretion, any claims in favor of the trust estate or against the trust estate.

For convenience of administration, the Trustees may cause any stocks, securities or property at any time held in trust to be registered in the name of the nominee or nominees of the Trustees or in the name of the Corporate Trustee without disclosure of its trust capacity, or may hold any stocks or securities in bearer form, so that they will pass by

delivery, but no such registration shall relieve the Trustees from responsibility for the acts of their nominee or nominees or from liability for the safe custody of any such stocks, securities or other property or from responsibility for the acts of their nominee or nominees.

The Trustees may make distribution of the trust estate in kind or in cash, or partly in kind and partly in cash, and the determination of the Trustees as to the fairness and equality of any such distribution shall be conclusive upon all persons entitled to receive any share of the trust estate.

The Trustees shall not be liable for any loss or depreciation in the value of the trust estate occurring by reason of error of judgment in making any sale or investment or reinvestment, or in continuing to hold in trust any property herewith or hereafter transferred to the Trustees or any investment or reinvestment hereafter made, unless they shall have failed to act in good faith or with reasonable care.

The Trustees shall not be required to furnish any bond or security for the performance of their duties hereunder.

The Trustees may sell for cash or upon credit and may mortgage or partition upon such terms as they may deem advisable any real estate at any time held in trust. The Trustees may make, execute and deliver leases or renewals of leases for terms not exceeding for any lease or renewal of lease

twenty-one years without making application to the court.

4. Anything herein contained to the contrary notwithstanding, the Grantor or any delegate or delegates appointed by him pursuant to the provisions hereof, and Harry M. Warner or any delegate or delegates appointed by him pursuant to the provisions hereof, and Jack L. Warner or any delegate or delegates appointed by him pursuant to the provisions hereof so long as the Grantor and Harry M. Warner and Jack L. Warner are all living, shall have the right jointly and unanimously to direct the sale or other disposition by the Trustees of the whole or any part of the trust property and the investment or reinvestment of any cash in the hands of the Trustees in such of the securities which are hereinabove permitted to the Trustees as they may wish, but no others, and shall also have the right jointly and unanimously to direct the exercise or non-exercise by the Trustees of any right of conversion or subscription and the participation or non-participation or manner of participation by the Trustees in any reorganization, consolidation, merger or other capital readjustment of any corporation, the stocks or securities of which are at any time held in trust, and shall solely, and to the exclusion of the Corporate Trustee, be vested with all of the discretionary powers and privileges hereinbefore and in Articles 1 and 3 of this Indenture granted to the Trustees, and the Trustees shall have no power to sell or otherwise dispose of the whole

or any part of the trust property or invest or reinvest any cash in the hands of the Trustees, or take any action with reference to any conversion or subscription right or with reference to any reorganization, consolidation, merger or other capital readjustment of any corporation, the stocks or securities of which are at any time held in trust, except as they are jointly and unanimously directed by the Grantor or any delegate or delegates appointed by him pursuant to the provisions hereof, and Harry M. Warner or any delegate or delegates appointed by him pursuant to the provisions hereof and Jack L. Warner or any delegate or delegates appointed by him pursuant to the provisions hereof, in accordance with the provisions hereof so long as the Grantor and Harry M. Warner and Jack L. Warner are all living. In case the Grantor or Harry M. Warner or Jack L. Warner shall die, Stanleigh P. Friedman shall, for the purpose of this paragraph, be substituted in the place and stead of the one so dying and said Stanleigh P. Friedman and the two survivors of the Grantor and Harry M. Warner and Jack L. Warner or any delegate and/or delegates appointed by either or both of said two survivors pursuant to the provisions hereof shall have all the rights and powers conferred upon the Grantor and Harry M. Warner and Jack L. Warner or the delegate or delegates of any one or more of them so long as all three are living. In case said Stanleigh P. Friedman shall die either before or after the death of the one of the following

persons first to die but before the death of the second of the one of the following persons second to die, namely, the Grantor and Harry M. Warner and Jack L. Warner, the Grantor and Harry M. Warner and Jack L. Warner so long as all three are living and the two survivors of them in case only two of them shall be living shall have the right from time to time, by instrument under their hands and seals duly acknowledged in the form required to entitle a conveyance of real property to be recorded in the State of New York and delivered to the Trustees, to jointly and unanimously appoint a substitute in the place and stead of said Stanleigh P. Friedman and in case any substitute so appointed by them as aforesaid shall die, to from time to time appoint another substitute in the place and stead of any substitute who shall die, and after the death of the Grantor or Harry M. Warner or Jack L. Warner and said Stanleigh P. Friedman any substitute appointed in accordance with the provisions hereof and the two survivors of the Grantor and Harry M. Warner and Jack L. Warner or any delegate and/or delegates appointed by either or both of said two survivors pursuant to the provisions hereof, shall have all the powers and authority conferred upon the Grantor and Harry M. Warner and Jack L. Warner or the delegate or delegates of any one or more of them, so long as all three are living. In case either the Grantor or Harry M. Warner or Jack L. Warner shall be deceased, the provisions of this Article 4 shall be in-

operative during any period in which there is no substitute for said Stanleigh P. Friedman duly appointed, qualified and acting. In case two of the following persons shall die, namely, the Grantor and Harry M. Warner and Jack L. Warner, the provisions of this Article 4 from and after the happening of such event shall become inoperative and shall be null and void and of no effect. Said Stanleigh P. Friedman or any other substitute appointed in accordance with the provisions hereof may at any time resign by an instrument under his hand and seal and duly acknowledged and filed with the Trustees, and in the event of the resignation of said Stanleigh P. Friedman or any other substitute appointed in accordance with the provisions hereof, or in case Stanleigh P. Friedman or any other substitute appointed in accordance with the provisions hereof shall be unable to act hereunder on account of sickness, the Grantor and Harry M. Warner and Jack L. Warner so long as all three are living or the two survivors of them, if only two of them shall be living, shall have the right from time to time to appoint a new substitute in the place and stead of said Stanleigh P. Friedman or any other substitute who shall so resign or be unable on account of sickness to act hereunder, and any such substitute shall have all the powers, authority and discretion of the person in whose place and stead he or she was appointed; provided, however, that in case any substitute shall be appointed to act in the place and stead of said Stanleigh P. Friedman

or any other substitute appointed in accordance with the provisions hereof, on account of the inability of said Stanleigh P. Friedman or any other substitute appointed in accordance with provisions hereof to act hereunder on account of sickness, the appointment of such substitute shall only continue and be effective so long as said Stanleigh P. Friedman or any other substitute named in accordance with the provisions hereof shall be unable to act on account of sickness, and if such inability shall cease the appointment of such new substitute shall from and after such time be inoperative and of no effect and said Stanleigh P. Friedman or any other substitute who was unable to act on account of sickness shall, from and after the time that any such inability shall cease, have all the rights, power, authority and discretion that he had prior to the commencement of such inability. The Grantor and Harry M. Warner and Jack L. Warner, so long as all three are living, and the two survivors of them in case only two of them shall be living, shall be the judges as to whether said Stanleigh P. Friedman or any other substitute appointed in accordance with the provisions hereof is unable on account of sickness to act hereunder, and the Trustee shall be fully protected in relying upon the written statement of the Grantor and Harry M. Warner and Jack L. Warner, so long as all three are living, or the two survivors of them in case only two of them shall be living, that said Stanleigh P. Friedman or any other substitute appointed in accordance with

the provisions hereof is unable on account of sickness to act hereunder. The Grantor or Harry M. Warner or Jack L. Warner shall each have the right by an instrument under his hand and seal, duly acknowledged and delivered to the Trustees, at any time so long as the provisions of this Article 4 shall continue operative to any time and from time to time and for any reason to delegate any or all of the powers, authority or discretion given to him by this Article 4 to such person or persons as he may name, who may be either one of the others or the two others of the said Grantor, Harry M. Warner and Jack L. Warner, or any other person or persons, and at any time and from time to time by an instrument under his hand and seal, duly acknowledged and delivered to the Trustees to revoke any such delegation, provided, however, that any such delegation shall remain in full force and effect unless and until the same is revoked by the person making the delegation in the manner herein set forth, or unless and until the death of the person making the delegation or unless and until the provisions of this paragraph shall become inoperative by reason of the death of two of the following persons, namely, the Grantor and Harry M. Warner and Jack L. Warner. The Trustees shall be fully protected in acting upon any direction of the Grantor and said Harry M. Warner and Jack L. Warner, and any delegate or delegates or substitute or substitutes named in accordance with the provisions hereof, and shall not be liable for any de-

preciation or loss resulting to the trust estate from any action taken or omitted to be taken under the direction of the Grantor and said Harry M. Warner and Jack L. Warner and their delegate or delegates or substitute or substitutes named in accordance with the provisions hereof, nor shall the Trustees be liable for any loss or depreciation resulting to the trust estate by reason of their inability to act because of the provisions of this Article 4.

5. Harry M. Warner, Jack L. Warner and Stanleigh P. Friedman, and the survivors and survivor of them, shall have the right and power at any time and from time to time during their lives by deed or other instrument executed and acknowledged in the form required by law to entitle a conveyance of real property to be recorded, to revoke this Trust Indenture or to alter or amend any term or provision thereof in any way or to any extent that may seem to them, or the survivors or survivor of them, desirable except that they and the survivors or survivor of them shall have no power to diminish the compensation of the Corporate Trustee, and no person except to the extent herein expressly stated shall have any right, title, interest or estate in or to the trust estate or under any term or provision of this Trust Indenture, except subject to the revocation, alteration or amendment of this Indenture, and the rights, titles, interests and estates created hereby in accordance with the provisions of this Article 5. Upon the delivery to the Trustees by said Harry M. Warner, Jack L. Warner and Stanleigh P. Fried-

man, or the survivors or survivor of them, of said deed or other instrument so signed and acknowledged by said Harry M. Warner, Jack L. Warner and Stanleigh P. Friedman and/or the survivors or survivor of them, this Trust Indenture shall be revoked, altered or amended in the manner or to the extent therein set forth. The term "revocation" as herein used shall include a total or partial revocation. In case this Indenture and the trusts hereby created shall be revoked in whole or in part, the property constituting the trust estate or so much thereof as to which the trust is revoked shall be transferred, assigned and delivered by the Trustees to Jack L. Warner or to the estate of Jack L. Warner, if he be deceased. In case of a partial revocation, the person or persons having the right to revoke under the provisions of this Article 5 shall have the right to direct from what portion of the trust estate still held in trust under the provisions of this Indenture at the time of such revocation the property as to which this trust is revoked shall be withdrawn, and in the absence of any such direction if this Trust Indenture and the trusts hereby created shall be partially revoked, the amount as to which the trust is revoked shall be taken proportionately from all funds then held in trust subject to the terms of this Indenture.

Nothing in this Article 5 contained shall be deemed to confer upon said Harry M. Warner, Jack L. Warner and Stanleigh P. Friedman and/or the survivors or survivor of them the right or power in

any way to affect the disposition herein contained or alter the terms and provisions of this Indenture with reference to any property held subject to the provisions of this Indenture, which has become vested in the possession of any person and presently payable and distributable by the Trustees under the provisions of this Indenture but which has not in fact been paid and distributed by the Trustees, or with reference to any property held subject to the provisions of this Indenture which has vested in the possession of any person under the provisions of this Indenture, the payment of which is postponed by any provision of this Indenture.

6. The Trustees or any one or more of them may at any time resign by mailing to the other Trustees and to the beneficiaries who at the date of such resignation may be entitled to the enjoyment of the income from the trust estate, or to their respective representatives, at their last known post offices addresses, respectively, a written notification of such resignation and thereupon shall be entitled to apply to any court having jurisdiction in the premises for the judicial settlement of their accounts as Trustees or Trustee hereunder.

7. This Trust Indenture shall be construed according to the laws of the State of New York where the trust estate is to be administered.

8. Anything herein contained to the contrary notwithstanding, wherever in this Indenture Jackie is given the right by his last will and testament, in case he shall be deceased, to appoint or direct the

payment of a part, portion or fraction of any share or portion of the trust estate which he would have been entitled to receive, if living, to his widow if he shall leave a widow living at the time of distribution of any such share or portion, the term "widow" as herein used shall include his widow to whom he was legally married at the time of his decease, whether or not such widow shall have remarried.

9. In case Stanleigh P. Friedman shall die or resign or for any other reason cease to be a Trustee hereunder, the Grantor and Harry M. Warner and Jack L. Warner and the survivors or survivor of them shall have the right, by instrument under their hands and seals duly acknowledged in the form required to entitle a conveyance of real property to be recorded in the state of New York and delivered to the Trustees, to from time to time appoint a substitute or successor trustee in the place and stead of said Stanleigh P. Friedman and in case any substitute or successor trustee so nominated or appointed shall die or resign or for any other reason cease to act as trustee hereunder, to from time to time appoint another substitute or successor trustee in the place and stead of any substitute or successor trustee who shall die or resign or for any other reason cease to act as trustee hereunder. Any substitute or successor trustee so appointed shall in all respects be substituted in the place and stead of said Stanleigh P. Friedman and shall have all the rights, powers, authorities, privileges and title here-

in conferred upon or vested in said Stanleigh P. Friedman.

10. The Grantor and Harry M. Warner and Jack L. Warner and Stanleigh P. Friedman, and the survivors or survivor of them shall have the right and power, by instrument under their hands and seals, duly acknowledged in the form required to entitle a conveyance of real property to be recorded in the State of New York, and delivered to the Trustees, to at any time remove the Corporate Trustee, Central Hanover Bank and Trust Company, and to appoint a new Corporate Trustee in the place and stead of the Corporate Trustee herein named, and also to from time to time remove any Successor Corporate Trustee at any time appointed in accordance with any provision of this Article 10 and appoint another Corporate Trustee in the place and stead thereof; provided, however, that any Corporate Trustee appointed in accordance with any provision of this Article 10 shall be a banking corporation authorized to do business in the State of New York and having its principal office and place of business in the Borough of Manhattan and City of New York; provided, further, that no such instrument removing the Corporate Trustee herein named or any other Corporate Trustee appointed pursuant to any provision of this Article 10 shall be effective until another Corporate Trustee authorized to transact business in the State of New York and having its principal office and place of business in the Borough of Manhattan and City of New York,

shall have been appointed in the place and stead thereof, it being the intention of the Grantor that there shall always be a Corporate Trustee acting under the terms and provisions of this Indenture so long as any trust created by this Indenture shall continue in operation. The term "Trustees" as used in this Indenture shall include any Corporate Trustee appointed in accordance with any provision of this Article 10, and any such Corporate Trustee which shall be appointed shall have all the rights, powers, authorities, privileges and title herein conferred upon the Corporate Trustee, Central Hanover Bank and Trust Company. In case the Corporate Trustee herein named or any Successor Corporate Trustee at any time appointed in accordance with any provision of this Article 10 shall resign or for any other reason cease to act as a trustee hereunder, the Grantor and Harry M. Warner and Jack L. Warner and Stanleigh P. Friedman, and the survivors or survivor of them shall have the right and shall be under a duty by an instrument under their hands and seals and duly acknowledged and delivered to the Trustees, to appoint another Corporate Trustee in the place and stead of any such Corporate Trustee which has ceased to act as a trustee hereunder. In case at any time there shall be no Corporate Trustee acting hereunder, and the Grantor and Harry M. Warner and Jack L. Warner and Stanleigh P. Friedman, and the survivors or survivor of them shall fail within sixty days after there shall fail to be a Cor-

porate Trustee acting hereunder to appoint a new Corporate Trustee, or in case all of said persons shall be deceased, any Court of the State of New York having jurisdiction for the purpose may appoint a new Corporate Trustee hereunder with all the rights, title, interests, powers, authorities and privileges given to the Corporate Trustee herein named.

11. All acts and decisions of the Trustees, as trustees, shall be unanimous except where powers are herein vested exclusively in individual trustees or their delegates or substitutes, in which cases they must also act jointly and unanimously, and except as herein otherwise expressly set forth.

12. Whenever in the administration of the trusts hereby created, it shall become necessary for the Trustees to engage legal counsel or employ accountants, so long as there shall be individual Trustees or an individual Trustee acting under the provisions hereof, the individual Trustees or individual Trustee who shall be acting at such time, whether or not such individual Trustees or Trustee be named herein or be a successor trustee appointed in accordance with the provisions hereof, shall have the right to decide what person or persons shall be engaged as legal counsel by the Trustees or engaged as accountants by the Trustees.

In witness whereof, Albert Warner has hereunto set his hand and seal both as Grantor and as Trustee, and Harry M. Warner, Jack L. Warner and Stanleigh P. Friedman have hereunto set their

hands and seals, and Central Hanover Bank and Trust Company has caused these presents to be executed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized, the day and year above written.

(Signed) ALBERT WARNER (L. S.)

As Grantor

(Signed) HARRY M. WARNER (L. S.)

As Trustee

(Signed) ALBERT WARNER (L. S.)

As Trustee

(Signed) JACK L. WARNER (L. S.)

As Trustee

(Signed) STANLEIGH P. FRIEDMAN (L. S.)

As Trustee

(Seal) CENTRAL HANOVER BANK AND
TRUST COMPANY

Attest: By B. W. READ (Signed)

Asst. Vice President

As Trustee

L. F. RANDOLPH (Signed)

Assistant Secretary

EXHIBIT "G"

INSURANCE TRUST INDENTURE

Between

Jack L. Warner

Grantor

and

Albert Warner, Harry M. Warner, Stanleigh P.

Friedman and Central Hanover Bank

and Trust Company

Trustees

Dated May 26th, 1932

This trust indenture made the 26th day of May, 1932, between Jack L. Warner, as Grantor, and Albert Warner, Harry M. Warner, Stanleigh P. Friedman and Central Hanover Bank and Trust Company, a corporation organized and existing under the banking laws of the State of New York, as Trustees,

Witnesseth:

The Grantor has herewith deposited with the Trustees and does hereby transfer, assign and convey to the Trustees all his right, title and interest in and to certain life insurance policies on his life described in Schedule A hereto annexed, receipt of which by the Trustees is hereby acknowledged, and which together with any additional life insurance policies or other property which the Grantor or any other person may hereafter deposit with and/or convey to the Trustees subject to the trusts hereby created together with the proceeds thereof, all of

which is hereinafter collectively called the trust estate, shall be held by the Trustees and the survivors or survivor of them and their successors and assigns upon the trusts herein set forth. The Grantor agrees at any time to execute and deliver to the Trustees any further instruments necessary to enable the Trustees to perform the trusts.

1. The Trustees are hereby authorized and directed to collect the proceeds of all policies of insurance which shall have been assigned to or otherwise made payable to the Trustees as and when the same shall become payable to the Trustees; provided, however, that the Trustees shall not be required to institute suit to collect the proceeds of any policy of insurance unless they are in possession of funds sufficient for that purpose or unless they have been indemnified to their satisfaction for the costs, disbursements and all other expenses of any such suit.

2. The Trustees shall hold, manage, invest and from time to time reinvest the trust estate (provided, however, that nothing herein contained shall be construed to prohibit the Trustees from continuing to hold in trust any insurance policies although the same may not be productive of income or may be a wasting asset) and the Trustees shall dispose of the trust estate as follows:

(a) Upon the signing of this Agreement by all parties and the receipt of the policies described in Schedule A hereto annexed, by the Trustees, the Trustees shall set aside policies having a face value of five hundred and fifty thousand dollars (\$550,000)

and shall hold the same as a separate fund subject to the terms and provisions hereof during the life of the Grantor. In case any income shall be received from this trust fund during the life of the Grantor, such income shall as hereinafter provided be applied to the payment of premiums, assessments and other charges on any policies of insurance held in trust under this Agreement, whether forming a part of this particular trust fund or not, and the Trustees shall transfer, assign and pay over any balance of the income not so used or applied to Irma Warner, wife of the Grantor, hereinafter called the Wife, and Jack M. Warner, son of the Grantor, hereinafter called Jack, in the following proportions so long as both are living, that is to say, four-fifths thereof to the Wife and one-fifth thereof to Jack, and all to the survivor of the Wife and Jack in case only one of them shall be living. In case both the Wife and Jack shall die during the Grantor's life, any balance of income not used or applied for the payment of premiums, assessments or other charges on policies of insurance held in trust shall be paid to the issue of Jack who shall be living at the date and/or dates of receipt of such income in equal shares, per stirpes and not per capita; or if no issue of Jack shall be then living to those persons who would, at the date and/or dates of receipt of such income, be entitled to inherit the personal estate of the Grantor under the laws of the State of New York if he had died intestate on the respective date and/or dates of receipt of such income.

Upon the death of the Grantor, the Trustees shall dispose of the principal of this trust fund as follows:

The Trustees shall transfer, assign and pay over from the principal of said fund, the sum of Four Hundred Thousand Dollars (\$400,000) to the Wife if she shall survive the Grantor, or if the Wife shall not survive the Grantor but Jack shall survive the Grantor, the Trustees shall add the said sum of Four Hundred Thousand Dollars (\$400,000) to the principal of the trust estate hereinafter created for Jack's benefit under the provisions of subsection (ii) of subdivision (b) of this Article 2 of this Trust Indenture and shall hold and dispose of the same in accordance with the terms and provisions of said subsection (ii) of said subdivision (b) of this Article 2, or if Jack shall also not survive the Grantor, the Trustees shall transfer, assign and pay over said sum of Four Hundred Thousand Dollars (\$400,000) to the issue of Jack who shall survive the Grantor in equal shares, per stirpes and not per capita; or if no issue of Jack shall survive the Grantor to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if the Grantor had died seized and possessed of the same and intestate.

The Trustees shall upon the death of the Grantor transfer, assign and pay over to Jack from the principal of this trust fund the sum of One Hundred Fifty Thousand Dollars (\$150,000) in case he shall survive the Grantor, or if Jack shall not sur-

vive the Grantor to the issue per stirpes of Jack who shall survive the Grantor, or if no issue of Jack shall survive the Grantor to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if the Grantor had died seized and possessed of the same and intestate.

If both the Wife and Jack shall survive the Grantor and the principal of this trust fund shall be insufficient to pay to both the sums herein directed to be paid to them in full, and any other funds shall be held in trust under any other term or provision of this Agreement, the amount of any such deficiency shall be made up proportionately from the principal of the other funds held in trust at the time of the death of the Grantor to the extent to which they shall be sufficient, and if such additional funds shall prove insufficient or if there shall be no such additional funds held in trust at the time of the Grantor's death, then to the extent to which the funds available for payment shall be insufficient to make payment in full, the amounts herein directed to be paid to the Wife and Jack shall abate proportionately.

If only the Wife or Jack, but not both, shall survive the Grantor, the amount herein directed to be paid to the one who shall so survive shall be paid in full from the principal of this trust fund notwithstanding that there shall not be left sufficient funds to pay to the persons who take in the event of the

death of the one who has died the full amount herein directed to be paid to them, and if the principal of this trust fund shall prove insufficient to make such payment to such survivor and other funds shall be held in trust under any provision hereof, then proportionately from such funds to the extent to which they shall be sufficient.

Nothing herein contained shall be construed to give to any person other than the Wife or Jack any interest in any other funds held under any other provision of this Agreement.

(b) After setting aside policies of insurance of the face amount of five hundred fifty thousand dollars (\$550,000) as hereinbefore provided in subdivision (a), the Trustees shall hold and dispose of the balance of the trust estate as follows:

(i) The Trustees shall set aside such portion of such balance as shall equal at the market value thereof at the time of setting aside the same two-thirds thereof and shall hold the same in trust for the Wife, paying over to her the entire net annual income therefrom in each year during her life, subject, however, to the provisions for the payment of the premiums, assessments and other charges on policies of insurance held in trust out of income as hereinafter provided. Upon the death of the Wife in case Jack shall survive the Wife, the Trustees shall add said two-thirds portion of the balance of the trust estate to the portion of the trust estate held in trust for Jack under the terms and provisions of subsection (ii) of this subdivision

(b) of this Article 2 of this Trust Indenture and shall hold and dispose of the same in accordance with the terms and provisions of said subsection (ii), or if Jack shall not survive the Wife the Trustees shall transfer, assign and pay over said two-thirds portion of the balance of the trust estate to the issue of Jack who shall survive the Wife in equal shares, per stirpes and not per capita; or if no issue of Jack shall survive the Wife to those persons who would be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if the Grantor had died seized and possessed of the same and intestate at the same time as the Wife.

(ii) The Trustees shall set aside the remaining one-third portion of such balance and shall hold the same in trust for Jack, paying over to him the entire net annual income therefrom in each year during his life, subject, however, to the provisions for the payment of premiums, assessments and other charges on policies of insurance held in trust out of income as hereinafter provided, and upon the death of Jack the Trustees shall transfer, assign and pay over the principal of said portion of the trust estate to such persons and upon such estates as Jack shall by his last will and testament duly admitted to probate validly limit and appoint, or to the extent to which Jack shall have failed to make valid testamentary disposition of the whole or any part of said portion of the trust estate, to those persons other than the wife of Jack, who would

be entitled to inherit the same and in the proportions in which they would inherit the same under the laws of the State of New York if Jack had died seized and possessed of the same intestate and without a wife him surviving.

(c) Anything herein contained to the contrary notwithstanding, in case any income shall be received by the Trustees while life insurance policies on which premiums, assessments or other charges are payable are held in trust, such income shall be applied by the Trustees to the payment of such premiums, assessments and other charges on any policy of insurance held in trust to the extent to which it shall be sufficient, and the balance of any income not so applied shall be paid over as herein directed. All dividends, sickness and disability benefits and all other payments which shall be received by the Trustees on account of any insurance policy held in trust which are not in whole or in part in payment or satisfaction of the face amount of such policy, shall be considered income and disposed of as such.

(d) During the minority of any beneficiary, the Trustees may use and apply so much of the net annual income payable to such beneficiary under the provisions hereof for the benefit, support, education, comfort, welfare and maintenance of such minor beneficiary as they may deem advisable, accumulating any balance of income, and upon such beneficiary attaining the age of twenty-one years, the Trustees shall transfer, assign and pay over to

such beneficiary all the income accumulated for his or her benefit.

(e) Anything herein contained to the contrary notwithstanding, in case any share or portion of the trust estate shall vest in the possession of any minor beneficiary, the Trustees shall retain and shall hold, manage, invest and from time to time reinvest the same and shall use and apply so much of the net annual income therefrom for the support, education, benefit, comfort, welfare and maintenance of such beneficiary as they shall deem advisable, accumulating any balance of income not so used or applied, and upon any such beneficiary attaining the age of twenty-one years, the Trustees shall transfer, assign and pay over to such beneficiary the entire principal of his or her share and all accumulations of income thereon; provided, however, that nothing herein contained shall be deemed to postpone the vesting of any such share or portion and in case any such minor beneficiary shall die before attaining the age of twenty-one years, the principal of his or her share or portion together with all accumulations of income thereon shall form a part of his or her estate and shall be disposed of accordingly.

(f) Instead of making personal application of income for the use of any minor beneficiary, the Trustees may transfer, assign and pay over so much of such income as they may deem advisable to either parent or the guardian of the person or property of such minor beneficiary to be by him or her applied to the support, education, comfort, welfare,

benefit and maintenance of such minor beneficiary. The Trustees shall be fully protected in any payments of income so made to such parent or guardian and shall not be responsible for the same but their whole duty and responsibility shall cease upon the making of any such payment.

3. It shall not be lawful for any beneficiary entitled to receive income under any provision hereof to sell, assign, encumber, charge or dispose of by way of anticipation or otherwise, the income payable to any such beneficiary or any part thereof, and notwithstanding any such charge, sale, assignment or other disposition, the Trustees are hereby required to pay such income into the proper hands of such beneficiary for his or her separate and peculiar use and benefit, whether married or single, upon his or her own receipt. Nor shall such income or any part thereof be in any wise liable to any claim of any creditor of any such beneficiary.

4. Subject to the restrictions and limitations herein contained, the Trustees and the survivors or survivor of them and their successors and assigns shall have the following powers, authority and discretion, namely:

To continue to hold upon the trusts hereby created any or all life insurance policies and other property herewith or hereafter conveyed to the Trustees. Nevertheless, in case it shall seem to the individual Trustees advisable so to do, they may direct the Trustees, from time to time, to sell or dispose of all or any part of the same or of any

other property which may at any time constitute the trust estate. The Trustees may invest and from time to time reinvest the proceeds of sale of any of the trust property or any cash held in trust in the public stocks or obligations of the United States of America or of any of the following States thereof, or of any County or City of the following States, namely, New York, New Jersey, Massachusetts, Pennsylvania, Ohio, Illinois, Maine, Rhode Island, Maryland and California, whether or not the same be legal investments for trustees under the laws of the State of New York, and may also, at any time and from time to time, invest such proceeds of sale or any cash held in trust, in such other stocks, bonds, securities, real or personal property as they may deem advisable whether or not the same shall be legal investments for Trustees under the laws of the State of New York, provided however, that no investments shall be made in stocks, bonds, securities or real or personal property other than the Federal, State or Municipal bonds specifically provided above, if after giving effect to such investments, the market value of such other stocks, bonds, securities and real or personal property shall exceed in the aggregate fifty per cent (50%) of the then market value of all the property held in the trust estate, but nothing herein contained shall be construed to require the Trustees to change investments because of any subsequent change in the market value of the securities or property at any time held in trust.

The Trustees may become a party to any reorganization, consolidation, merger or other capital readjustment of any corporation, the stocks or securities of which may at any time be held in trust. They may participate in any such reorganization, consolidation, merger or readjustment to the same extent and as fully as though they were the absolute and individual owners of such stocks or securities, and may deposit with any committee or depositary, pursuant to any plan or agreement of reorganization, consolidation, merger or readjustment, any property held in trust and may make payment from the principal of the trust estate of any charges or assessments imposed by the terms of any plan or agreement of reorganization, consolidation, merger or readjustment, and may receive and continue to hold in trust any property allotted to the trust estate by reason of their participation therein, whether or not the same is an investment of the character hereinabove permitted to the Trustees.

The Trustees may exercise conversion or subscription rights, appurtenant to any stocks, bonds or other securities at any time held in trust, and may use such portion of the principal of the trust estate as may be necessary therefor, whether or not the property resulting from the exercise of any such right will be an investment of the character hereinabove permitted to the Trustees, or in the discretion of the Trustees may sell any such rights. Investments made through the exercise of any such

rights or proceeds received on the sale thereof shall be considered principal.

The Trustees shall not be required to establish any sinking fund to amortize the premium at which any investment or reinvestment may be purchased.

All extraordinary dividends and all realized appreciation in the value of stocks, bonds, securities or other property resulting from the sale or other disposition thereof shall, so far as permitted by law, be considered principal and not income, but ordinary stock dividends paid regularly by a corporation in lieu of or in addition to regular cash dividends shall be considered income and not principal; provided, however, that the Trustees' determination as to whether any dividend should be apportioned or allocated in whole or in part to principal or income shall so far as permitted by law be conclusive and binding upon all persons now or hereafter interested in the trust estate. The Trustees unless otherwise provided herein may pay out of the income received from the trust estate all expenses of the trust and all taxes which may be properly assessed against the trust estate or any beneficiary thereof.

The Trustees may hold the trust estate or any part thereof as an undivided whole without separation as between the trusts hereby created, but no such holding shall defer the vesting of any estate in possession or otherwise according to the terms hereof. The Trustees may compromise, adjust, settle and compound or submit to arbitration on such terms as

may seem advisable to them in their discretion, any claims in favor of the trust estate or against the trust estate.

The Trustees may cause any stocks, securities or property at any time held in trust to be registered in the name of the nominee or nominees of the Trustees or in the name of the Corporate Trustee without disclosure of its trust capacity, or may hold any stocks or securities in bearer form so that they will pass by delivery. Nothing herein contained shall be deemed to relieve the Trustees from liability for the safe custody of any such stocks, securities or other property or from responsibility for the acts of their nominee or nominees.

The Trustees may make distribution of the trust estate in kind or in cash or partly in kind and partly in cash, and the determination of the Trustees as to the fairness and equality of any such distribution shall be conclusive upon all persons entitled to receive any share of the trust estate.

The Trustees shall not be liable for any loss or depreciation in the value of the trust estate occurring by reason of error of judgment in making any sale or investment or reinvestment or in continuing to hold in trust any property herewith or hereafter transferred to the Trustees or any investment or reinvestment hereafter made, unless they shall have failed to act in good faith or with reasonable care.

The Trustees shall not be required to furnish any bond or security for the performance of their duties hereunder.

The Trustees may sell for cash or upon credit and may mortgage or partition upon such terms as they may deem advisable any real estate at any time held in trust. The Trustees may make, execute and deliver leases or renewals of leases for terms not exceeding for any lease or renewal of lease twenty-one years, without making application to the court.

5. Anything herein contained to the contrary notwithstanding, Albert Warner and Harry M. Warner and Stanleigh P. Friedman and Jack M. Warner, son of the Grantor, or any delegate or delegates appointed by any one or more of them pursuant to the provisions hereof, so long as Albert Warner and Harry M. Warner and Stanleigh P. Friedman and Jack M. Warner are all living, shall have the right to jointly and unanimously direct the sale or other disposition by the Trustees of the whole or any part of the insurance policies held in trust or of any other trust property and the investment or reinvestment of any cash in the hands of the Trustees in such of the securities which are hereinabove permitted to the Trustees as they may wish, but no others, and shall also have the right to jointly and unanimously direct the exercise or non-exercise by the Trustees of any right of conversion or subscription and the participation or non-participation or manner of participation by the Trustees in any reorganization, consolidation, merger or other capital readjustment of any corporation, the stocks or securities of which are at any time held in trust, and the Trustees shall have no

power to sell or otherwise dispose of the whole or any part of the insurance policies held in trust or of any other trust property or invest or reinvest any cash in the hands of the Trustees, or take any action with reference to any conversion or subscription right or with reference to any reorganization, consolidation, merger or other capital readjustment of any corporation, the stocks or securities of which are at any time held in trust, except as they are jointly and unanimously directed by Albert Warner and Harry M. Warner and Stanleigh P. Friedman and Jack M. Warner, or any delegate or delegates appointed by any one or more of them pursuant to the provisions hereof, in accordance with the provisions hereof, so long as Albert Warner and Harry M. Warner and Stanleigh P. Friedman and Jack M. Warner are all living; provided, however, anything herein contained to the contrary, that Jack M. Warner shall have no rights, powers, authority or discretion hereunder unless and until he shall have attained full age, and unless and until said Jack M. Warner has attained the age of twenty-one years all rights, powers, authority and discretion given by this Article 5 shall be exercised by Albert Warner, Harry M. Warner and Stanleigh P. Friedman so long as all three are living. In case Albert Warner or Harry M. Warner or Stanleigh P. Friedman or Jack M. Warner shall die, the three survivors of said four persons or the two of said four persons who shall be of full age in case one of said three survivors of said four persons shall be Jack

M. Warner, if and so long as Jack M. Warner shall be under the age of twenty-one years, or any delegate and/or delegates appointed by any one or more of said three survivors or the two of said three survivors who are of full age, in accordance with the provisions hereof, shall have all the rights and powers conferred upon said four persons or the three of them who are of full age, and the delegate or delegates of any one or more of them, so long as they are all living. In case said Stanleigh P. Friedman shall die either before or after the death of the one of the following persons first to die but before the death of the second of the one of the following persons second to die, namely, Albert Warner, Harry M. Warner and Jack M. Warner, said Albert Warner and Harry M. Warner and Jack M. Warner, so long as all three are living, or the two of said three persons who are of full age, in case Jack M. Warner shall not be of full age, and the two survivors of said three persons in case only two of said three persons shall be living if and when both of said two survivors are of full age, shall have the right from time to time by instruments under their hands and seals duly acknowledged in the form required to entitle a conveyance of real property to be recorded in the State of New York and delivered to the Trustees, to jointly and unanimously appoint a substitute in the place and stead of said Stanleigh P. Friedman, and in case any substitute for said Stanleigh P. Friedman so appointed as aforesaid shall die, to from time to time appoint another

substitute for said Stanleigh P. Friedman in the place and stead of any substitute who shall die, and after the death of Albert Warner or Harry M. Warner or Jack M. Warner and said Stanleigh P. Friedman, any substitute for Stanleigh P. Friedman appointed in accordance with the provisions hereof and the two survivors of Albert Warner and Harry M. Warner and Jack M. Warner if and when both of said two survivors shall be of full age, or any delegate and/or delegates appointed by either or both of said two survivors in accordance with the provisions hereof, shall have all the powers, authority and discretion conferred upon Albert Warner and Harry M. Warner and Stanleigh P. Friedman and Jack M. Warner, or the three of them who are of full age, so long as they are all living. In case either Albert Warner or Harry M. Warner or Jack M. Warner shall be deceased and said Stanleigh P. Friedman shall also be deceased, the provisions of this Article 5 shall be inoperative during any period during which there is no substitute for said Stanleigh P. Friedman duly appointed, qualified and acting, and in such event the provisions of this Article 5 shall also be inoperative if and so long as both of the two survivors of Albert Warner, Harry M. Warner and Jack M. Warner are not of full age notwithstanding the fact that there shall be a substitute for said Stanleigh P. Friedman duly appointed, qualified and acting. Said Stanleigh P. Friedman or any substitute for said Stanleigh P. Friedman

appointed in accordance with the provisions hereof may at any time resign by an instrument under his hand and seal duly acknowledged and filed with the Trustees, and in the event of the resignation of said Stanleigh P. Friedman or any substitute for said Stanleigh P. Friedman appointed in accordance with the provisions hereof, or in case said Stanleigh P. Friedman or any substitute for said Stanleigh P. Friedman appointed in accordance with the provisions hereof shall be unable on account of sickness to act hereunder, Albert Warner and Harry M. Warner and Jack M. Warner so long as all three are living and of full age, or the two of said three persons who shall be of full age in case all three shall be living but Jack M. Warner shall be under the age of twenty-one years, or the two survivors of said three persons, if only two of them shall be living, if and when said two survivors are both of full age, shall have the right from time to time to appoint a substitute in the place and stead of said Stanleigh P. Friedman or any substitute for said Stanleigh P. Friedman who shall so resign or be unable on account of sickness to act hereunder, and any such substitute shall have all the powers, authority and discretion of the person in whose place and stead he or she was appointed, provided, however, that in case any substitute shall be appointed to act in the place and stead of said Stanleigh P. Friedman or any substitute for said Stanleigh P. Friedman appointed in accordance with the provisions hereof on account

of the inability of said Stanleigh P. Friedman, or any substitute of said Stanleigh P. Friedman appointed in accordance with the provisions hereof, to act hereunder on account of sickness, the appointment of said substitute shall only continue and be effective so long as said Stanleigh P. Friedman, or any substitute for said Stanleigh P. Friedman named in accordance with the provisions hereof, shall be unable to act on account of sickness, and if such inability shall cease, the appointment of such substitute shall from and after such time be inoperative and of no effect and said Stanleigh P. Friedman, or any substitute for said Stanleigh P. Friedman, who was unable to act on account of sickness shall from and after the time when such liability shall cease have all the rights, powers, authority and discretion that he had prior to the commencement of such inability. The persons having the right to appoint a substitute for said Stanleigh P. Friedman, or any substitute for said Stanleigh P. Friedman, in case of the inability of said Stanleigh P. Friedman, or any substitute for said Stanleigh P. Friedman, to act on account of sickness, shall be the judges as to whether said Stanleigh P. Friedman or any substitute for said Stanleigh P. Friedman appointed in accordance with the provisions hereof is unable on account of sickness to act hereunder, and the Trustees shall be fully protected in relying upon the written statement of said persons that said Stanleigh P. Friedman or any substitute for said Stanleigh P. Fried-

man appointed in accordance with the provisions hereof is unable on account of sickness to act hereunder.

Albert Warner or Harry M. Warner or Stanleigh P. Friedman or Jack M. Warner shall each have the right if and so long as he shall be acting hereunder by an instrument under his hand and seal duly acknowledged and delivered to the Trustee, so long as the provisions of this Article 5 shall continue operative, to at any time and from time to time and for any reason delegate any and all of the powers, authority and discretion given to him by this Article 5 to such person or persons as he may name who may be either one or more of the others of said Albert Warner, Harry M. Warner, Stanleigh P. Friedman and Jack M. Warner, or any other person or persons, and at any time and from time to time by an instrument under his hand and seal duly acknowledged and delivered to the Trustees to revoke any such delegation, provided, however, that any such delegation shall remain in full force and effect unless and until the same is revoked by the person making the delegation in the manner herein set forth, or unless and until the death of the person making the delegation.

In case two of the following persons shall die, namely, Albert Warner, Harry M. Warner and Jack M. Warner, the provisions of this Article 5 shall from and after the happening of such event become inoperative and shall be null and void and of no effect. The Trustees shall be fully protected

in acting upon any direction of the persons who shall from time to time have the right to direct the Trustees under the provisions of this Article 5 and shall not be liable for any depreciation or loss resulting to the trust estate from any action taken or omitted to be taken under the direction of said persons. Neither shall the Trustees be liable for any loss or depreciation resulting to the trust estate by reason of their inability to act because of the provisions of this Article 5.

Nothing in this Article 5 contained shall be construed to prohibit the Trustees from exercising any of the powers, authority and discretion given to the Trustees by any provision of this Trust Indenture, if and so long as the provisions of this Article 5 shall be inoperative for any reason.

6. Albert Warner, Harry M. Warner and Stanleigh P. Friedman shall have the right and power at any time and from time to time during their joint lives by deed or other instrument executed and acknowledged in the form required by law to entitle a conveyance of real property to be recorded to revoke this Trust Indenture or to alter or amend any term or provision thereof in any way or to any extent which may seem to them desirable, except that they shall have no power to diminish the compensation of the Corporate Trustee and in the event of the death of any one or more of the aforesaid three persons, the following two persons in the following order shall be and are hereby nominated and constituted to be the substitutes

to fill any vacancy or vacancies caused either by the death of any one or more of the aforesaid three persons or by the death of either or both of the two following persons, namely, Jack M. Warner, son of the Grantor, and Joseph H. Hazen. In the event, however, that Jack M. Warner shall be called upon to fill any vacancy in pursuance of the order of filling vacancies aforesaid and shall not at that time be of lawful age, then the vacancy which Jack M. Warner would have filled, if of full age, shall be filled by Joseph H. Hazen, if living, instead of by Jack M. Warner, and Jack M. Warner, if and when he shall be of full age, shall fill the next vacancy. If, however, said Joseph H. Hazen shall not be living when such vacancy occurs and Jack M. Warner is not of full age, then Jack M. Warner shall fill such vacancy if and when he attains the age of twenty-one years. If only two of the five persons mentioned in this Article 6, to wit, Albert Warner, Harry M. Warner, Stanleigh P. Friedman, Jack M. Warner and Joseph H. Hazen shall be living, the two survivors of said persons if and/or when both of said two survivors are of full age shall have all the rights, powers, authority and discretion conferred upon Albert Warner, Harry M. Warner, and Stanleigh P. Friedman, so long as all three are living. If more than two of said five persons mentioned in this Article 6 shall be living but only two of said five persons shall be of full age, the said two persons who shall be of full age shall, if and so long as they are the only two of said five

persons who are living and of full age, have all the rights, powers, authority and discretion conferred upon Albert Warner, Harry M. Warner and Stanley P. Friedman so long as all three are living. The provisions of this Article 6 shall be inoperative if and so long as there shall not be two of said five persons herein mentioned living and of full age and the provisions of this Article 6 shall also be inoperative from and after the time when there are less than two of said five persons herein mentioned living. Each and every substitute herein named including the substitute of a substitute shall have all the rights, powers, authority and discretion given by the provisions of this Article 6 to the person in whose place and stead he or she was appointed and if any substitute or substitutes shall qualify hereunder, the provisions of this Article 6 shall be construed as if such substitute or substitutes were originally named herein instead of the person or persons in whose place and stead he, she or they is or are appointed. No person except to the extent herein expressly stated shall have any right, title, interest or estate in or to the trust estate or under any term or provision of this Trust Indenture except subject to the revocation, alteration or amendment of this Trust Indenture and the rights, titles, interests and estates created hereby in accordance with the provisions of this Article 6. Upon the delivery to the Trustees by the persons from time to time having the right to revoke, alter or amend, of said deed or other instrument so signed and

acknowledged by them, this Trust Indenture shall be revoked, altered or amended in the manner or to the extent therein set forth. The term "revocation" as herein used shall include a total or partial revocation. In case this Trust Indenture and the trusts hereby created shall be revoked in whole or in part, the property constituting the trust estate or so much thereof as to which the trust is revoked shall be transferred, assigned and delivered by the Trustees to the Grantor, or to the estate of the Grantor, if he be deceased.

Nothing in this Article 6 contained shall be deemed to confer upon the persons from time to time having the right to revoke, alter or amend under the terms and provisions hereof, the right or power to in any way affect the disposition herein contained or alter the terms and provisions of this Indenture with reference to any property held subject to the provisions of this Indenture which has become vested in the possession of any person and presently payable and distributable by the Trustees under the provisions of this Indenture but which has not in fact been paid and distributed by the Trustees, or with reference to any property held subject to the provisions of this Indenture which has vested in the possession of any person under the provision of this Indenture, the payment of which is postponed by any provision of this Indenture.

7. The Trustees or any one or more of them may at any time resign by mailing to the other Trustees at such time acting and to the beneficiaries

who at the date of such resignation may be entitled to the enjoyment of the income from the trust estate, or to their respective representatives, at their last known post office addresses, respectively, a written notification of such resignation and thereupon shall be entitled to apply to any court having jurisdiction in the premises for the judicial settlement of their accounts as Trustees or Trustee hereunder.

8. This Trust Indenture shall be construed according to the laws of the State of New York where the trust estate is to be administered.

9. In case Stanleigh P. Friedman shall die or resign or for any other reason cease to be a Trustee hereunder, the Grantor and Albert Warner and Harry M. Warner and the survivors or survivor of them shall have the right, by instruments under their hands and seals duly acknowledged in the form required to entitle a conveyance of real property to be recorded in the State of New York and delivered to the Trustees, to from time to time appoint a substitute or successor trustee in the place and stead of said Stanleigh P. Friedman and in case any substitute or successor trustee so nominated or appointed shall die or resign or for any other reason cease to act as trustee hereunder, to from time to time appoint another substitute or successor trustee in the place and stead of any such substitute or successor trustee who shall die or resign or for any other reason cease to act as trustee hereunder. Any substitute or successor trustee so appointed shall in all respects be substituted

in the place and stead of said Stanleigh P. Friedman as a Trustee, and shall have all the rights, powers, authorities, privileges and title herein conferred upon or vested in said Stanleigh P. Friedman as a Trustee.

10. The Grantor and Albert Warner and Harry M. Warner and Stanleigh P. Friedman, and the survivors or survivor of them shall have the right and power, by instrument under their hands and seals duly acknowledged in the form required to entitle a conveyance of real property to be recorded in the State of New York and delivered to the Trustees, at any time to remove the Corporate Trustee, Central Hanover Bank and Trust Company, and to appoint a new Corporate Trustee in the place and stead of the Corporate Trustee herein named, and also from time to time to remove any Successor Corporate Trustee at any time appointed in accordance with any provision of this Article 10 and appoint another Corporate Trustee in the place and stead thereof; provided, however, that any Corporate Trustee appointed in accordance with any provision of this Article 10 shall be a banking corporation authorized to do business in the State of New York and having its principal office and place of business in the Borough of Manhattan and City of New York; provided, further, that no such instrument removing the Corporate Trustee herein named or any other Corporate Trustee appointed pursuant to any provision of this Article 10 shall be effective until another Corporate Trustee authorized to transact business in the State of New York and having its principal office and

place of business in the Borough of Manhattan and City of New York, shall have been appointed in the place and stead thereof, it being the intention of the Grantor that there shall always be a Corporate Trustee acting under the terms and provisions of this Indenture so long as any trust created by this Indenture shall continue in operation. The term "Trustees" as used in this Indenture shall include any Corporate Trustee appointed in accordance with any provisions of this Article 10 and any such Corporate Trustee which shall be appointed shall have all the rights, powers, authorities, privileges and title herein conferred upon the Corporate Trustee, Central Hanover Bank and Trust Company. In case the Corporate Trustee herein named or any Successor Corporate Trustee at any time appointed in accordance with any provision of this Article 10 shall resign or for any other reason cease to act as a Trustee hereunder, the Grantor and Albert Warner and Harry M. Warner and Stanleigh P. Friedman, and the survivors or survivor of them shall have the right and shall be under a duty by an instrument under their hands and seals and duly acknowledged and delivered to the Trustees to appoint another Corporate Trustee in the place and stead of any such Corporate Trustee which has ceased to act as a Trustee hereunder. In case at any time there shall be no Corporate Trustee acting hereunder, and the Grantor and Albert Warner and Harry M. Warner and Stanleigh P. Friedman and the sur-

vivors or survivor of them shall fail within sixty days after there shall fail to be a Corporate Trustee acting hereunder to appoint a new Corporate Trustee, or in case all of said persons shall be deceased, any Court of the State of New York having jurisdiction for the purpose may appoint a new Corporate Trustee hereunder with all the rights, title, interests, powers, authorities and privileges given to the Corporate Trustee herein named.

11. All acts and decisions of the Trustees, as Trustees, shall be unanimous except where powers are herein vested exclusively in individual Trustees or their delegates or substitutes, in which cases they also must act jointly and unanimously, and except as herein otherwise expressly set forth.

12. Whenever in the administration of the trusts hereby created, it shall become necessary for the Trustees to engage legal counsel or employ accountants so long as there shall be individual Trustees or an individual Trustee acting under the provisions hereof, the individual Trustees or individual Trustee who shall be acting at such time, whether or not such individual Trustees or Trustee be named herein or be a successor Trustee appointed in accordance with the provisions hereof, shall have the right to decide what person or persons shall be engaged as legal counsel by the Trustees or engaged as accountants by the Trustees.

13. In the event that the income from the trust estate, so long as the life insurance policies, on which premiums, assessments or other charges are

payable, are held in trust, shall not be sufficient to pay such premiums, assessments or other charges, nothing herein contained shall be construed to require the Trustees to procure funds with which to pay such premiums, assessments or other charges above the amount of income received by them and they shall not be liable for their failure so to do. The Trustees shall not be responsible if for any reason any policy of insurance held in trust shall lapse or be or become otherwise uncollectable.

14. The Trustees shall be the complete and absolute owners of the policies of insurance held in trust and shall have the right to sell or assign any such policy; to borrow money upon any such policy and to hypothecate the same to secure any loan; to receive all dividends on any such policy; to surrender any such policy for cash and to use any such cash surrender value received by them for the purpose of keeping other policies of insurance held by them in force or of adding the proceeds proportionately to the principal of the trust estate or for any other purpose which they may deem advisable; to receive all payments of any kind which may be made during the life of the insured on any policy held in trust; and to exercise any and all other rights, options or privileges which belong to the absolute owner thereof or which are granted by the terms of any such policies or by the terms of this Deed of Trust, except that if and so long as the provisions of Article 5 hereof shall be operative, the Trustees

shall take no action with reference to any insurance policy except as they are directed by the persons having the right to so direct them under the provisions of Article 5 hereof.

In Witness Whereof, Jack L. Warner has hereunto set his hand and seal as Grantor, and Albert Warner and Harry M. Warner and Stanleigh P. Friedman have hereunto set their hands and seals and Central Hanover Bank and Trust Company has caused these presents to be executed and its corporate seal to be hereunto affixed by its officers thereunto duly authorized the day and year above written.

JACK L. WARNER (L.S.)

As Grantor

HARRY M. WARNER (L.S.)

As Trustee

ALBERT WARNER (L.S.)

As Trustee

STANLEIGH P. FRIEDMAN (L.S.)

As Trustee

CENTRAL HANOVER BANK AND
TRUST COMPANY

(Corporate Seal) By B. W. READ,
Asst. Vice President.

Attest:

L. F. RANDOLPH,

Asst. Secy.

[Endorsed]: U. S. B. T. A. Filed at Hearing
Apr. 4, 1940.

[Title of Board and Cause.]

Docket No. 97401. Promulgated October 15, 1940.

1. Gift Tax—Income Payments From Revocable Trust.—Neither the payment of income to petitioner's son and wife from a trust of which a brother of the petitioner was the nominal settlor and over which the petitioner and two others had power to vest the corpus in the petitioner, nor the payment of income to a brother's family from a similar reciprocal trust of which the petitioner was the nominal settlor, constituted a taxable gift from the petitioner, following Estate of Giles W. Mead, 41 B. T. A. 424.

2. Gift Tax—Exclusion—Future Interests.—Edwin Goodwin, 41 B. T. A. 472, followed.

Stanleigh P. Friedman, Esq., and Lawrence A. Baker, Esq., for the petitioner.

B. M. Brodsky, Esq., for the respondent.

OPINION

Murdock: The Commissioner determined the following deficiencies in gift tax:

1932	\$75.14
1933	541.60
1935	3,969.41

The petitioner assigns as error the action of the Commissioner in holding that a gift tax is due from the petitioner on account of income paid in each year to his son and former wife from a trust es-

established by his brother Albert. The Commissioner raises, as an alternative to the correctness of his determination, an affirmative issue that he erred in failing to tax as gifts to the petitioner the income payments made in the taxable years from a trust established by the petitioner. The petitioner claims two exclusions of \$5,000 each in case the respondent's primary contention is sustained, three in case the respondent's alternative contention is sustained, and two others in respect to an "insurance trust." The facts have been stipulated. [53]

Harry, Albert, and Jack L. Warner are brothers. They are the principal executives of Warner Bros. Pictures, Inc. Each has a substantial amount invested in that corporation. The death in 1931 of Lewis Warner, son of Harry, who had been expected to succeed the three brothers in representing the family interests in the corporation, caused the brothers to consider ways and means of insuring the financial security of themselves and their families and of protecting themselves against the exigencies and hazards of the talking picture business, in which the bulk of their fortunes was invested.

They decided to place about \$6,000,000, invested in United States Government obligations, in three trusts. The trusts were to be substantially identical except as to beneficiaries and were to be as safe as possible from acts of the brothers and their families. Stanleigh P. Friedman has been closely associated with the Warners as counsel since 1912. They consulted him and he drew three trust instruments

to secure a "maximum of revocability," to prevent any one brother from invading the corpus, to exclude any "possibility of reverter" to the grantor of the corpus of any trust, to prevent the grantor of a trust from receiving income of that trust, to prevent any one brother from dominating the affairs of the family of a deceased brother, and to minimize and avoid estate taxes. Counsel also suggested that the trusts be created before the gift tax provisions proposed in the 1932 Revenue Bill should become the law. The three trusts were created on May 26, 1932, one by each brother, and each brother transferred to the trust created by him \$2,000,000 face amount of United States Government obligations belonging to him.

The trust created by Albert Warner provided that the income from one-half of the corpus should be paid to the petitioner, the income from one-fourth should be paid to Jack M. Warner, son of the petitioner, and the income from one-fourth should be paid to Irma Warner, then the wife of the petitioner. The income was so paid during the three taxable years. The trustees named were the three Warner brothers, Friedman and a bank. The power to revoke, alter, and amend was vested exclusively in Harry Warner, Friedman, and the petitioner, acting together. The corpus affected by any revocation was to go to the petitioner or his estate. The Commissioner has held that the petitioner was the grantor of that trust, he could revoke it, and the income payments to Irma and Jack M. were gifts from him.

The petitioner created a similar trust on May 26, 1932, under which the income from one-half was payable to the wife and daughters of Harry. The trustees were the same. The power to revoke, alter, and amend was vested in Harry, Albert, and Friedman, and the [54] corpus affected by a revocation was to go to Harry. Harry also created a similar trust on the same day, the chief differences being that the income was payable to Albert and his wife, the power to revoke, alter, and amend was vested in Albert, Friedman, and the petitioner, and the corpus affected by a revocation was to go to Albert.

It does not appear that any one of the Warners would have created a trust for the benefit of his brother's family had not the other two agreed at the same time to create similar trusts but, on the contrary, the creation of each was dependent upon and in consideration of the creation of the other two.

The Commissioner has determined the deficiencies upon the theory that the petitioner was the settlor of the trust which made the payments to his son and his former wife; he and two persons without adverse interests could revoke the trust; the trust was an incomplete gift; and the payment of the income to the son and former wife constituted a gift taxable to the petitioner. The Commissioner still advances that theory as his primary contention. He argues that the petitioner was the real, though not the nominal, grantor of the trust benefiting the petitioner and his family as a result of the recipi-

cality of the almost identical trusts. The case of Allan S. Lehman, et al., Executors, 39 B. T. A. 17; affd., 109 Fed. (2d) 99; certiorari denied U. S. (5/20/40) holds, under similar circumstances, that one who by paying a quid pro quo has caused another to create a trust for his benefit may properly be regarded as the settlor. The Commissioner continues with the argument that the petitioner, the settlor, has retained for himself, in conjunction with two others without adverse interests, the power to alter, amend, or revoke the trust. Therefore, concludes the Commissioner, the income, which the petitioner had the power to withhold, was a gift as it was paid to the wife and son during the taxable years.

He also makes an alternative argument, solely for protection and quite subordinate to the one just described. It is that the payments of income from the trust created by the petitioner for the benefit of Harry's family are taxable gifts from the petitioner, since the reservation of powers in others to alter, amend, or revoke left the gift to the beneficiaries incomplete until income was actually paid to them.¹

An absolutely essential premise in each of these

¹It would appear that the payment of this income could not be a taxable gift from the petitioner under any circumstances, since he had parted absolutely with the property and had retained no power to revest title in himself. Cf. section 501 (c) of the Revenue Act of 1932, repealed as unnecessary by section 511 of the Revenue Act of 1934.

contentions of the Commissioner is that current income from a revocable trust [55] constitutes a taxable gift at the time it is paid to the beneficiaries. The Board has held directly to the contrary in *Estate of Giles W. Mead*, 41 B. T. A. 424, after considering the same arguments which the Commissioner makes here to support his premise. The Board disagrees with the present argument of the Commissioner that the *Mead* case was incorrectly decided. He next attempts to distinguish the present case from the *Mead* case on the ground that there the income of the trust was not taxable to the settlor, whereas here it would be. We need not decide whether the factual difference exists, because it would not distinguish the cases in any event. The income tax question was mentioned in the *Mead* opinion, but that opinion was not made to depend upon whether or not the income of the trust was taxable to the grantor. The cases are not distinguishable upon the ground suggested by the Commissioner or upon any other ground that has come to our attention. It follows that the payment of the income of the trusts was not the occasion of a taxable gift and neither argument of the Commissioner supports his determination of deficiencies.

The only question remaining for decision is whether the petitioner is entitled to annual exclusions up to \$5,000 for each beneficiary in computing his annual gifts to an insurance trust resulting from his payment of the annual premiums. The petitioner had irrevocably assigned to the trust

certain policies of life insurance upon his own life. The trustees were to collect the proceeds upon his death, invest them, and pay the income from the investments to the son and to the then wife of the petitioner, with remainders over. The interest of the wife was eliminated on March 19, 1935, and the son remained as the sole life beneficiary. The payment of the premiums did not constitute gifts of future interests and, consequently, the exclusions are allowed under section 504 (b) of the Revenue Act of 1932. *Edwin Goodman*, 41 B. T. A. 472; *Welch v. Davidson*, 102 F. (2d) 100. A separate exclusion is allowed for each beneficiary. *Wilton Rubinstein*, 41 B. T. A. 220. *Contra*, *U. S. v. Ryerson*, Fed. (2d) (7/9/40).

Reviewed by the Board.

Decision will be entered under Rule 50.

Opper, dissenting: Revenue Act of 1932, section 501 (c) provides:

The [gift] tax shall not apply to a transfer of property in trust where the power to revest in the donor title to such property is vested in the donor, * * * but * * * any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift. [56]

Although this section was repealed by Revenue Act of 1934, section 511, that action was not retroactive and can have no effect on two of the years, 1932 and 1933, which are before us here. Of greater and

seemingly controlling significance is the reason given for the repeal, which was:¹ "Since the principle expressed in that section is now a fundamental part of the law by virtue of the Supreme Court's decision in the Guggenheim Case."² In that case Mr. Justice Cardozo made it clear that where the power to revoke is retained no completed gift of principal or future income results. "As to the principal of the trusts and as to income to accrue thereafter the gifts were formal and unreal." The opinion goes on to say that in making "deeds of gift after the Act of 1924" taxpayers "had the assurance of a Treasury regulation that the tax would not be laid, where the power of revocation was uncanceled, *except upon the income paid from year to year.*" (Emphasis added.) If this statement of existing law was the reason for the repeal of section 501 (c), that action is no reason for failure to apply the gift tax to "the income paid from year to year."

And since it was the payment of income "which was taxed as a transfer and not the transfer in trust, the statute was not retroactively applied"³ so as to contravene the prospective emphasis furnished by section 501 (b).

I respectfully dissent.

Disney and Harron agree with this dissent. [57]

¹H. Rept. No. 704, 73d Cong., 2d sess., p. 40, Sen. Rept. No. 558, 73d Cong., 2d sess., p. 50. And see *Estate of Sanford v. Commissioner*, 308 U. S. 39, 45.

²*Burnet v. Guggenheim*, 288 U. S. 280.

³*Estate of Sanford v. Commissioner*, *supra*, p. 43.

United States Board of Tax Appeals

Docket No. 97401.

JACK L. WARNER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

The respondent on December 6, 1940 filed a proposed computation, pursuant to the Board's Opinion promulgated October 15, 1940. The petitioner agrees with said computation and has noted his acquiescence thereon. Therefore, it is

Ordered and decided, that there is no deficiency in gift tax for the years 1932 and 1933, and that there is an overpayment in gift tax for the year 1935 in the amount of \$42.49 which is barred by the statute of limitations.

(Signed) J. E. MURDOCK
Member.

Enter: Entered December 13, 1940. [58]

In the United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

PETITION FOR REVIEW

Guy T. Helvering, United States Commissioner of Internal Revenue, hereinafter referred to as the Commissioner, holding office by virtue of the laws of the United States, hereby petitions the United States Circuit Court of Appeals for the Ninth Circuit to review the decision entered by the United States Board of Tax Appeals on December 13, 1940, ordering and deciding that there are no deficiencies in gift tax due from Jack L. Warner, respondent on review, for the years 1932 and 1933, and an overpayment in gift tax for the year 1935 in the amount of \$42.49. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

Jack L. Warner, the respondent on review, hereinafter referred to as the taxpayer, filed his gift tax returns for the years 1932, 1933 and 1935 with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California, whose office is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit. [59]

Nature of Controversy

The nature of the controversy is as follows, to-wit:

Harry, Albert and Jack L. Warner, the taxpayer, are brothers. They are the principal executives of

Warner Brothers Pictures, Inc. Each had a substantial amount invested in that corporation. For the purpose of insuring the financial security of themselves and their families and of protecting themselves against the exigencies and hazards of the talking picture business, in which the bulk of their fortunes was invested, they decided to place \$6,000,000 invested in United States Government obligations in three trusts. The three trusts were created on May 26, 1932, one by each brother, and each transferred to his respective trust \$2,000,000 face amount of United States Government obligations. The trusts are substantially identical except as to the beneficiaries. The beneficiaries of Albert Warner's trust were taxpayer and his family; the beneficiaries of taxpayer's trust were Harry Warner and his family, and the beneficiaries of Harry Warner's trust were Albert and his family. In each trust, the two brothers of the grantor, Stanleigh P. Friedman, and the Central Hanover Bank & Trust Company of New York, were named as trustees. The individual trustees, acting together had the power to revoke, alter or amend the trust. Upon revocation the trusts were so arranged that the corpus of Albert Warner's trust would go to taxpayer; the corpus of taxpayer's trust would go to Harry Warner, and the corpus of Harry Warner's trust would go to Albert Warner. [60]

The Commissioner determined deficiencies in gift tax due from taxpayer for the years 1932, 1933 and 1935 in the respective amounts of \$75.14, \$541.60 and \$3,969.41 upon the grounds that (1)

taxpayer was the real, as distinguished from the nominal, settlor of the trust which made the payments to his son Jack M. Warner and his former wife; (2) taxpayer and two persons without adverse interest could revoke the trust; (3) the trust was an incomplete gift; and (4) the payments of the income to the son and former wife constitute gifts taxable to the taxpayer.

In the alternative that the payments made from the trust created by the taxpayer to Harry Warner and his family were taxable gifts, since the reservation of powers in others, without adverse interest, to alter, revoke, or amend the trust, left the gift to the beneficiaries incomplete until income was actually paid to them.

The taxpayer petitioned for a redetermination of the gift tax deficiencies for the years 1932, 1933 and 1935, by the Board of Tax Appeals, asserting that the Commissioner had erred in determining that the amounts paid during said years from trust income to taxpayer's son and wife, the beneficiaries named in the Albert Warner trust, were taxable as gifts made by taxpayer. The Commissioner in his answer denied the allegation of error.

By amended petition filed with the Board of Tax Appeals April 15, 1940, the taxpayer alleged that the Commissioner [61] had failed to allow the proper number of statutory exclusions in computing the net gifts to a certain insurance trust, created by the taxpayer, due to his payment of annual premiums on certain life insurance policies on his life

transferred to said trust. The Commissioner filed his answer to the amended petition, April 23, 1940, denying the alleged error and averred affirmatively that he had erred in allowing two statutory exclusions aggregating \$10,000, in his notice of deficiency for the years 1932, 1933 and 1935, and that taxpayer was entitled to only one exclusion of \$5,000 with respect to the gifts made from trust income, under either the "primary" or "alternative" theories in computing the annual gifts made under the trust indenture dated May 26, 1932.

The Board of Tax Appeals concluded that (1) neither the payment of income to taxpayer's son and wife from a trust, of which taxpayer's brother Albert Warner was the nominal settlor and over which the taxpayer and two others had power to vest the corpus in taxpayer nor the payment of income by taxpayer to his brother's family from a similar reciprocal trust of which the taxpayer was the nominal settlor, constituted a taxable gift from the taxpayer during the years 1932, 1933 and 1935, and (2) the payment of the premiums on policies of life insurance did not constitute gifts of future interests and the number of exclusions is governed by the number of beneficiaries under the trust. [62]

ASSIGNMENTS OF ERROR

The Commissioner assigns the following errors:

The Board of Tax Appeals erred:

1. In holding and deciding that the payments made from the trust established by Albert Warner

to the son and wife of the taxpayer during the years 1932, 1933 and 1935, were not taxable in the year of their receipt as gifts made by the taxpayer.

2. In holding and deciding that the payments made to Harry Warner, his wife, and daughters during the years 1932, 1933 and 1935 from the trust established by the taxpayer, did not constitute taxable gifts from the taxpayer to his brother's family.

3. In failing to hold and decide that the taxpayer was the real grantor of the trust created by Albert Warner for the benefit of taxpayer and his family as a result of the reciprocal nature of the almost identical trusts created by each of the three brothers.

4. In failing to hold and decide that the payments of income during the years 1932, 1933 and 1935 to the wife and two daughters of Harry Warner, pursuant to the terms of the reciprocal trust created by the respondent on review May 26, 1932, operated to free the disposition of such income from the donor's control and therefore render the payments completed gifts within the meaning of the Federal Gift Tax statutes.

5. In holding that where gifts are made to a trust, the number of exclusions is governed by the number of beneficiaries under the trust. [63]

6. In failing to hold and decide that taxpayer was not entitled to the allowance of any exclusion with reference to gifts made for the insurance trust, in that all of the gifts made to the insurance trust were gifts of future interests as to which Section

504(b) of the Revenue Act of 1932 permits no exclusion.

7. In entering its final order of redetermination that there are no deficiencies in gift tax for the years 1932 and 1933, and an overpayment in gift tax for the year 1935, in the amount of \$42.49.

8. In failing to enter a final order of redetermination that there are due from the respondent on review deficiencies in gift tax for the years 1932, 1933 and 1935 in the respective amounts of \$75.14, \$541.60 and \$3,969.41.

9. In that its decision is not supported by the evidence.

10. In that its decision is contrary to law and regulations.

(s) SAMUEL O. CLARK, JR.

Assistant Attorney General

(Signed) J. P. WENCHEL

RLW

Chief Counsel,

Bureau of Internal Revenue

Of Counsel:

JOHN W. SMITH,

Special Attorney,

Bureau of Internal Revenue.

JWS:GEB

[Endorsed]: U. S. B. T. A. Filed Mar. 6, 1941.

[64]

In the United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To: Jack L. Warner,
1801 Angelo Drive,
Beverly Hills, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 6th day of March, 1941, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 6th day of March, 1941.

(Signed) J. P. WENCHEL

RLW

Chief Counsel,

Bureau of Internal Revenue

Personal service of the foregoing notice, together with a copy of the petition for review mentioned therein,, is hereby acknowledged this 13th day of March, 1941.

(s) JACK L. WARNER

Respondent on Review

[Endorsed]: U. S. B. T. A. Filed March 19, 1941.

[65]

In the United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

NOTICE OF FILING PETITION
FOR REVIEW

To: Stanleigh P. Friedman,
11 West 42nd Street,
New York, New York.

You are hereby notified that the Commissioner of Internal Revenue did, on the 6th day of March, 1941, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 6th day of March, 1941.

(Signed) J. P. WENCHEL,

RLW

Chief Counsel,

Bureau of Internal Revenue

Personal service of the foregoing notice, together with a copy of the petition for review mentioned therein, is hereby acknowledged this 7th day of March, 1941.

(s) STANLEIGH P. FRIEDMAN
Counsel for Respondent on Review

[Endorsed]: U. S. B. T. A. Filed Mar. 19, 1941.

In the United States Circuit Court of Appeals
for the Ninth Circuit

[Title of Cause.]

STATEMENT OF POINTS

Now comes Guy T. Helvering, Commissioner of Internal Revenue, the petitioner on review herein, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby asserts the following errors on which he intends to rely in this review:

1. The Board erred in holding and deciding that the payments made from the trust established by Albert Warner to the son and wife of the taxpayer during the years 1932, 1933 and 1935, were not taxable in the year of their receipt as gifts made by the taxpayer.

2. The Board erred in holding and deciding that the payments made to Harry Warner, his wife, and daughters during the years 1932, 1933, and 1935 from the trust established by the taxpayer, did not constitute taxable gifts from the taxpayer to his brother's family.

3. The Board erred in failing to hold and decide that the taxpayer was the real grantor of the trust created by Albert Warner for the benefit of taxpayer and his family as a result of the reciprocal nature of the almost identical trusts created by each of the three brothers.

4. The Board erred in failing to hold and decide that the payments of income during the years

1932, 1933 and 1935 to the wife and two [67] daughters of Harry Warner, pursuant to the terms of the reciprocal trust created by the respondent on review May 26, 1932, operated to free the disposition of such income from the donor's control and therefore render the payment completed gifts within the meaning of the Federal Gift Tax statutes.

5. The Board erred in holding that where gifts are made to a trust, the number of exclusions is governed by the number of beneficiaries under the trust.

6. The Board erred in failing to hold and decide that taxpayer was not entitled to the allowance of any exclusion with reference to gifts made for the insurance trust, in that all of the gifts made to the insurance trust were gifts of future interests as to which Section 504(b) of the Revenue Act of 1932 permits no exclusion.

7. The Board erred in entering its final order of redetermination that there are no deficiencies in gift tax for the years 1932 and 1933, and an overpayment in gift tax for the year 1935, in the amount of \$42.49.

8. The Board erred in failing to enter a final order of redetermination that there are due from the respondent on review deficiencies in gift tax for the years 1932, 1933 and 1935 in the respective amounts of \$75.14, \$541.60 and \$3,969.41.

9. The Board erred in that its decision is not supported by the evidence. [68]

10. The Board erred in that its decision is contrary to law and regulations.

(Signed) J. P. WENCHEL

RLW

Chief Counsel, Bureau of Internal Revenue.

Service of a copy of the within statement of points is hereby admitted this 14th day of August, 1941.

STANLEIGH P. FRIEDMAN
LAWRENCE A. BAKER

Counsel for Respondent on Review.

JWS:br 8-1-41

[Endorsed]: U. S. B. T. A. Filed Sept. 3, 1941.

[69]

In the United States Circuit Court of
Appeals for the Ninth Circuit

[Title of Cause.]

ORDER

Upon consideration of the motion filed herein by petitioner on review, and good cause appearing to the Court for the granting of such motion, it is by the Court ordered:

That the motion is granted as made and that the time for the preparation and transmission to the Clerk of this Court of the record sur petition for review filed in the above-entitled proceeding be and it

is hereby extended to and including June 16, 1941.

It is further ordered that the Clerk of this Court be directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order to be by him incorporated in the record on review as certified and transmitted by him to this Court.

By the Court,

FRANCIS A. GARRECHT

Judge, U. S. Circuit Court of
Appeals.

(Endorsed): Order Filed April 11, 1941, Paul
P. O'Brien, Clerk.

A true copy:

Attest: April 11, 1941

(Seal) (Signed) PAUL P. O'BRIEN

Clerk.

JWS:br.4/3/41

[Endorsed]: U. S. B. T. A. Filed Apr. 16, 1941.

[70]

In the United States Circuit Court of
Appeals for the Ninth Circuit

[Title of Cause.]

ORDER

Upon consideration of the motion filed herein by petitioner on review, and good cause appearing to the Court for the granting of such motion, it is by the Court ordered;

That the motion is granted as made and that the time for the preparation and transmission to the

Clerk of this Court of the record sur petition for review filed in the above-entitled proceeding be and it is hereby extended to and including August 15, 1941.

It is further ordered that the Clerk of this Court be directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order to be by him incorporated in the record on review as certified and transmitted by him to this Court.

By the Court,

CURTIS D. WILBUR

Judge, U. S. Circuit Court of
Appeals.

(Endorsed): Filed June 7, 1941. Paul P. O'Brien,
Clerk.

A true copy:

Attest: June 7, 1941

(Seal) (Signed) PAUL P. O'BRIEN,
Clerk.

[Endorsed]: U. S. B. T. A. Filed June 11, 1941.

[71]

In the United States Circuit Court of
Appeals for the Ninth Circuit

[Title of Cause.]

ORDER

Upon consideration of the motion filed herein by petitioner on review, and good cause appearing to

the Court for the granting of such motion, it is by the Court ordered:

That the motion is granted as made and that the time for the preparation and transmission to the Clerk of this Court of the record sur petition for review filed in the above-entitled proceeding be and it is hereby extended to and including September 15, 1941.

It is further ordered that the Clerk of this Court be directed to transmit to the Clerk of the Board of Tax Appeals a certified copy of this order to be by him incorporated in the record on review as certified and transmitted by him to this Court.

By the Court,

Judge, U. S. Circuit Court of
Appeals.

JWS:br. 8-1-41

(Endorsed): Filed August 6, 1941, Paul P. O'Brien, Clerk.

A true copy.

Attest: August 6, 1941

(Seal) Signed PAUL P. O'BRIEN
Clerk.

[Endorsed]: U. S. B. T. A. Filed Aug. 11, 1941.

[72]

In the United States Circuit Court of
Appeals for the Ninth Circuit

[Title of Cause.]

DESIGNATION OF PORTIONS OF RECORD,
PROCEEDINGS AND EVIDENCE TO BE
CONTAINED IN THE PRINTED RECORD
ON REVIEW.

To the Clerk of the United States Board of Tax
Appeals:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records in the above-entitled proceeding in connection with the petition for review by the Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of all proceedings before the Board.

2. Pleadings before the Board:

(a) Petition, including annexed copy of deficiency letter dated December 21, 1938, and Bureau letter dated August 4, 1938.

(b) Answer filed April 19, 1939.

(c) Amended Answer filed April 4, 1940.

(d) Reply to Amended Answer filed April 4, 1940.

(e) Amendment to petition filed April 15, 1940.

(f) Answer to amendment to petition filed April 23, 1940. [73]

(g) Reply to answer to amendment to petition filed April 30, 1940.

3. Stipulation of facts omitting Exhibits A to G, inclusive, these exhibits to be transmitted separately in accordance with order of Court. (See Item 6 hereof).

4. Opinion and Decision of the Board.

5. Petition for Review, together with proof of service of notice of filing and of service of a copy of petition for review.

6. Order of Court directing the Clerk of the Board of Tax Appeals to separately transmit Exhibits A, B, C, D, E, F and G, referred to in the Stipulation of Facts. (See Item 3 hereof.)

Not of record.

7. Statement of Points to be relied upon by petitioner on review.

8. Orders enlarging time for transmission of the certified typewritten record on review.

9. This Designation of Portions of Record to be contained in the printed record on review.

Said transcript is to be prepared, certified, and transmitted, as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

(Signed)

J. P. WENCHEL

RLW

Chief Counsel, Bureau of Internal Revenue.

Service of a copy of the within designation is hereby admitted this 14th day of August, 1941.

Agreed to:

STANLEIGH P. FRIEDMAN
LAWRENCE A. BAKER

Counsel for Respondent on Re-
view.

JWS:br 8-1-41

[Endorsed]: U. S. B. T. A. Filed Sept. 3, 1941.

[74]

[Title of Board and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 74, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeipie in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 5 day of Sept. 1941.

(Seal)

B. D. GAMBLE

Clerk, United States Board of
Tax Appeals.

[Endorsed]: No. 9909. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Jack L. Warner, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed September 11, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of
Appeals for the Ninth Circuit

U. S. C. C. A. No. 9909

B. T. A. Docket No. 97401

GUY T. HELVERING,

Commissioner of Internal Revenue,

Petitioner on Review,

v.

JACK L. WARNER,

Respondent on Review.

AMENDMENT TO DESIGNATION OF RECORD
FILED WITH THE U. S. BOARD OF
TAX APPEALS, SEPTEMBER 3, 1941.

To the Clerk of the United States Circuit Court
of Appeals for the Ninth Circuit:

Item 3 of the designation filed with the Board

under date of September 3, 1941, is amended to read as follows:

Stipulation of Facts including Exhibits A to G, inclusive.

Item 6 of the designation of September 3, 1941, is eliminated.

J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue. Counsel for Petitioner on Review.

Service of the copy of within amendment to designation is hereby admitted this 19th day of September, 1941.

Agreed to:

STANLEIGH P. FRIEDMAN

LAWRENCE A. BAKER

Counsel for Respondent on Review.

[Endorsed]: Filed Sep 25, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

PETITIONER'S DESIGNATION OF THE
PARTS OF THE RECORD TO BE
PRINTED

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

Guy T. Helvering, Commissioner of Internal Revenue, the petitioner on review herein, by his at-

torneys, Samuel O. Clark, Jr., Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, pursuant to his petition for review of the decision of the United States Board of Tax Appeals entered December 13, 1940, designates the parts of the record considered material to the questions on review to be included in the printed transcript of the record, as follows:

1. Docket entries of all proceedings before the Board.

2. Pleadings before the Board:

- (a) Petition, including annexed copy of deficiency letter dated December 21, 1938, and Bureau letter dated August 4, 1938.

- (b) Answer filed April 19, 1939.

- (c) Amended Answer filed April 4, 1940.

- (d) Reply to Amended Answer filed April 4, 1940.

- (e) Amendment to petition filed April 15, 1940.

- (f) Answer to amendment to petition filed April 23, 1940.

- (g) Reply to answer to amendment to petition filed April 30, 1940.

3. Stipulation of facts including pages 1 to 28, inclusive, of Exhibit "A" and pages 1 to 20, inclusive, of Exhibit "G", the remaining pages of said Exhibits and Exhibits B, C, D, E and F being omitted from the printed transcript of record.

4. Opinion and Decision of the Board.

5. Petition for Review, together with proof

of service of notice of filing and of service of a copy of petition for review.

6. Statement of Points to be relied upon by petitioner on review.

7. Orders enlarging time for transmission of the certified typewritten record on review.

8. Designation of Portions of Record, proceedings and evidence to be contained in the printed record on review.

9. Amendment to designation of record filed with the United States Board of Tax Appeals, September 3, 1941.

SAMUEL O. CLARK, Jr.

W.O.R

Assistant Attorney General.

J. P. WENCHEL

C. A. S.

Chief Counsel, Bureau of
Internal Revenue. Coun-
sel for Petitioner on Re-
view.

Service of a copy of the designation of the parts of the record to be printed is hereby admitted this 19th day of September, 1941.

Agreed to:

STANLEIGH P. FRIEDMAN

LAWRENCE A. BAKER

Attorneys for Respondent on
Review.

[Endorsed]: Filed Sept. 25, 1941. Paul P.
O'Brien, Clerk.

